

THE UNITED STATES AND GERMAN  
JEWISH PERSECUTIONS—

PRECEDENTS FOR POPULAR AND  
GOVERNMENTAL ACTION

By

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MAX J. KOHLER, M.A., L.L.B., D.H.L.

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FIFTH EDITION.

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B'NAI B'RITH EXECUTIVE COMMITTEE  
Electric Building, Cincinnati, Ohio

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Paper Submitted to the Jewish Academy of Arts and Sciences, June 1, 1933

By MAX J. KOHLER, M. A., LL. B., D. H. L.

I. Precedents for Popular Protests

In a very recently issued work by Prof. C. K. Webster and Sydney Herbert on "The League of Nations in Theory and Practice", the chapter on "Minorities" (p. 205) contains as a head-note a striking letter written by Lord Palmerston, then Prime Minister of England to Lord Clarendon December 2, 1859, reading as follows:

"The truth is, there is a passion in the human heart stronger than the desire to be free from injustice and wrong, and that is the desire to inflict injustice and wrong upon others, and men resent more keenly an attempt to prevent them from oppressing other people than they do the oppression from which they themselves suffer".

This truism, (which advance in civilization should have modified) has particular application today, however, to the German Government under Hitler and its emissaries and allies, in their efforts not merely to prevent international action to check their barbarism towards German Jewry, but even to prevent publication at home and abroad, of the facts regarding their reprehensible conduct and comments concerning the same. We have, accordingly, witnessed incredible and heretofore unheard of attacks on the life, liberty, property and pursuits of German Jews, avowedly in order to hold them as hostages and victims to prevent publication of so-called "atrocities charges" by third parties abroad. We have witnessed German governmental efforts, not merely successful in muzzling their own press, but also aimed to prevent foreign correspondents and ordinary letter and wire correspondence from communicating relevant facts abroad, accompanied by threadbare false governmental denials of unquestionable facts. We have noted German governmental protests to England for permitting public discussion in Parliament of her inhuman and brutal doings, which that great people seems to have ignored with silent contempt. We have read in our country, also, German officially inspired and allied personal statements that her treatment of her Jews is "an internal affair," which other governments and individuals have no right to concern themselves with, and even the Steuben Society of America has not merely belittled and misrepresented the actual occurrences, but protested at Americans taking cognizance of them, either personally or officially. These extraordinary contentions have been heard so seldom in civilized countries in recent years that they have not been analyzed latterly, and it is my purpose to consider them herein, first, as concerns popular protests, next, as to governmental representations. These expressions of external opinion are all the more important, because it is only by trying the German Government before the court of

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world opinion, that we can hope to check these outrages. In these days of the newspaper, the telegraph, the telephone, the cable and the wireless, it is not merely true that "die Weltgeschichte ist das Weltgericht", but present-day judgment has itself become a determining force.

Some years ago, in 1913, Luigi Luzzatti, distinguished Italian statesman, publicist and historian, organized an "International Committee for the Defense of Religious Freedom" in the interest of the persecuted Jews of Rumania, and among others who promptly joined this group were Visconti Venosta, Clemenceau, Anatole France, Ribot, Jaures, Theodore Roosevelt, James Bryce, Lord Rothschild, Bernard Shaw, and Lord Balfour. The noble appeal they sent to Premier Bratianu of Rumania is reprinted in Luzzatti's "God in Freedom" (p. 477 et seq.), and contains the following passages:

"May the conscience of the civilized world not be slow to awake and affirm the solidarity of human peoples. For the honor of the 20th century, may the citizens of every country, jealous of their rights, rise to defend the victims of religious and social intolerance. The injustice cannot long resist the stimulus of civilized opinion. The formation of the present committee is explained and justified by the idea that questions of general human interest can and ought to be the subject of international action, outside of all the distinctions of race or nationality".

When Bratianu protested that the Jewish question in Rumania was "an internal question," with which foreigners had no right to concern themselves, Luzzatti answered (p. 484):

"This did not prevent men of all countries, friends of freedom and justice, from bringing influence to bear on the administrators of the Rumanian state, and with them to bring about the triumph of these principles. Every time a question of justice and liberty is presented to the conscience of the civilized world, there are always found, both in the country itself and beyond its frontiers, men who have a passion for the right, and unite to enlighten public opinion, to act on behalf of the oppressed. In doing this, one does not violate the sovereignty of a state or impede its freedom of action".

Luzzatti, remarkably erudite scholar, as well as statesman, proceeded to quote some remarkably fine sentiments on this question, written by the distinguished American Unitarian minister and scholar, William E. Channing, which America herself has quite generally forgotten, though they are the fullest and ablest treatment of this question I know of. In Channing's letter to Jonathan Phillips of 1839, he wrote (I somewhat enlarge Luzzatti's quotations):\*

"I maintain that there is a moral interference with our fellow-creatures at home and abroad, not only to be asserted as a right, but binding as a duty . . . I maintain the right of acting on foreign countries by moral means for moral ends. Suppose that there were in contact with us a foreign state, which should ordain by law that every child born with black hair or a darkly-shaded face should be put to death; and

\* Channing's "Works, New and Complete Edition" of 1875, (p. 784 et seq.).:

suppose that every sixth child should be slaughtered by this barbarous decree. Or take the case of a community at our door, which should restore the old gladiatorial shows, and suppose that a large part of the population should perish in these execrable games. Who of us would feel himself bound to hold his peace because these atrocities were committed beyond our boundaries? Who would say that the tortures of the slain were no concern of ours, because not of our own parish or country? *Is humanity a local feeling? Does sympathy stop at a frontier? Does the heart shrink and harden as it approximates an imaginary line on the earth's surface? Is moral indignation moved only by crimes perpetrated under our own eyes? Has duty no work to do beyond our native land? Does a man cease to be a brother by living in another state? Is liberty nothing to us, if cloven down at a little distance? Christianity teaches different lessons.* Its spirit is unconfined love. One of its grandest truths is human brotherhood. Under its impulses Christians send the preacher of the cross to distant countries, to war with deep-rooted institutions. The spiritual ties which bind all men together were not woven by human policy, nor can statesmen sunder them . . . The position is false, that nation has no right to interfere morally with nations. *Every community is responsible to other communities for its laws, habits, character; not responsible in the sense of being liable to physical punishment and force, but in the sense of just exposure to reprobation and scorn; and this moral control communities are bound to exercise over each other, and must exercise over each other, and exercise it more and more in proportion to the spread of intelligence and civilization. The world is governed much more by opinion than by laws. It is not the judgment of courts, but the moral judgment of individuals and masses of men, which is the chief wall of defense round property and life.* With the progress of society, this power of opinion is taking the place of arms. Rulers are more and more anxious to stand acquitted before their peers and the human race. *National honor, once in the keeping of the soldier, is understood more and more to rest on the character of nations . . . I claim the right of pleading the cause of the oppressed, whether he suffers in this country or another. I utterly deny that people can screen themselves behind their nationality from the moral judgment of the world. Because they form themselves into a state, and forbid within their bounds a single voice to rise in behalf of the injured, because they crush the weak under the forms of law, do they hereby put a seal on the lips of foreigners? Do they disarm the moral sentiment of other states? Is this among the rights of sovereignty, that a people, however criminal, shall stand unrebuked? In consequence of the increasing intercourse and intelligence of modern times, there is now erected in the civilized world a grand moral tribunal, before which all communities stand and must be judged. As yet, its authority is feeble compared with what it is to be, but still strong enough to lay restraint, to inspire fear. Before this slave-holding communities are arraigned, and must answer. The friends of justice, liberty, and humanity accuse them of grievous wrongs. It is vain to talk of the prescription of two hundred years. Within this space of time great changes have taken place in the code by which the commonwealth of nations passes sentence. The doctrine of human rights has been expounded.*



The right of the laborer to wages, the right of every innocent man to his own person, the right of all to equity before the laws,—these are no longer abstractions of speculative visionaries, no longer innovations, but the established rights of humanity. Before the tribunal of the civilized world, and the higher tribunal of Christianity and of God, the slaveholder has to answer for stripping his brother of these recognized privileges and immunities of a man . . . You and I are nothing, but as we represent those great principles of justice and charity with which the human heart is everywhere beginning to beat . . . A few straggling individuals, given to a bad course, might be overlooked for their insignificance. But *when a community openly, by statutes, by arms, adopts and upholds an enormous wrong, then good men, through the earth, are bound to unite against it in stern, solemn remonstrance. The greater the force combined to support an evil, the greater the force needed for its subversion. Crime is comparatively weak until it embodies and 'sanctifies' itself in institutions . . .* This evil rests on associated strength, on the prostitution of the powers of the state. Regarded as an institution which combined millions uphold, it seems to have a strength, a permanence, against which individual power can avail nothing; and hence, it may be said, strength is to be sought in associations. The argument does not satisfy me; for I believe that, *to produce moral changes of judgment and feeling, the individual, in the long run, is stronger than combinations . . . Multitudes, even now, know no higher authority than human government.* They think that a number of men, perhaps little honored as individuals for intelligence and virtue, are yet competent, when collected into a legislature, to create right and wrong. *The most immoral institutions thus gain a sanctity from law. To the laws we are indeed bound to submit, in the sense of abstaining from physical resistance; but we are under no obligation to bow to them our moral judgment, our free thoughts, our free speech. What! Is conscience to stoop from its supremacy, and to become an echo of the human magistrate? Is the law, written by God's finger on the heart, placed at the mercy of interested statesmen? Is it not one of the chief marks of social progress that men are coming to recognize immutable principles, to understand the independence of truth and duty on human will, on the sovereignty of the state, whether lodged in one or many hands? . . . We expose, as we can, the crimes and cruelties of other States, and we ask of other States the same freedom towards our own.* If, in the opinion of the civilized world, or of any portion of it, we of this Commonwealth are robbing men of their dearest rights, and treading them in the dust, let the wrong be proclaimed far and wide. If good men anywhere believe that here the weak are at the mercy of the strong, and the poor are denied the protection of the laws, then let them make every State of the Union ring with indignant rebuke . . . If the oppressed are muzzled here, let the lips of the free elsewhere give voice to their wrongs".

Similarly, John Quincy Adams in his "Letters of Publicola", published in 1791 in answer to Thomas Paine's defense of the French Revolution in the latter's "Rights of Man", said:

"This principle, that a whole nation has a right to do whatever it pleases, cannot in any sense whatever be admitted as true. The eternal

and immutable laws of justice and of morality are paramount to all human legislation. . . . If, therefore, a majority thus constituted are bound by no law, human or divine, and have no other rule but their sovereign will and pleasure to direct them, what possible security can any citizen of the nation have for the protection of his unalienable rights? The principles of liberty must still be the sport of arbitrary power, and the hideous form of despotism must lay aside the diadem and the scepter only to assume the party-colored garments of democracy." (W. C. Ford's "Writings of John Quincy Adams", I 65 *et seq.* at 70-71).

Probably the most striking incident in our Government's diplomatic history was our public expression of sympathy for LOUIS KOSSUTH, the Hungarian revolutionist. President Taylor had sent A. Dudley Mann as a secret agent soon after the revolt of 1848, to Hungary, to study the situation, with a view to our promptly recognizing the independence of Hungary, if the events justified it, but with Russia's assistance, Austria put down the revolt, and Kossuth and other Hungarian patriots fled to Turkey, whereupon Austria and Russia demanded their surrender. In reporting his course, the President in his annual message of Dec. 1849 to Congress, stated: "I thought it my duty, in accordance with the general sentiment of the American people, to stand prepared, upon the contingency of the establishment by her of a permanent government, to be the first to welcome Hungary into the family of nations". (5 Richardson's "Messages" 12). Chevalier Hülsemann, the Austrian charge in Washington, thereupon sent a protest to the State Department. Even before the President's message was penned, Daniel Webster, then a U. S. Senator from Massachusetts, delivered an address in Boston Nov. 7th, 1849, in the course of which he said:

"We have all had our sympathies enlisted in the Hungarian effort for liberty. We have all wept at its failure. Despotic power from abroad intervened to suppress the hope of free government in Hungary . . . *Gentlemen, there is something on earth greater than arbitrary or despotic power, and that is the aroused indignation of the civilized world.* If the Emperor of Russia shall so violate international law as to seize these Hungarians and execute them, he will stand as a criminal factor in the view of the public law of the world. *The whole world will be the tribunal to try him, and he must abide its judgment*".

Soon thereafter, Webster became Secretary of State under President Fillmore, and as such he answered protests from Hülsemann in his famous letter of Dec. 21st, 1850, of which John W. Foster, former Secretary of State of the United States, said, in his "A Century of American Diplomacy" (p. 331): "Probably no paper emanating from the State Department ever met with a more widespread popular approval in America." Edward Everett had participated in the draftsmanship.

In the course of this letter, Webster wrote (Works of Daniel Webster, 6 vol. edition of 1853 Vol. VI 491 *et seq.*):

"This department has on former occasions, informed the ministers of foreign powers that a communication from the President to either house of Congress is regarded as a domestic communication, of which, ordinarily no foreign state has cognizance . . . *The government and peo-*



ple of the United States, like other intelligent governments and communities, take a lively interest in the movements and events of this remarkable age, in whatever part of the world they may be exhibited . . . With respect to the communication of Mr. Mann's instructions to the Senate, and the language in which they are couched, it has already been said, and Mr. Hülsemann must feel the justice of the remark, that these are domestic affairs, in reference to which the government of the United States cannot admit the slightest responsibility to the government of his Imperial Majesty . . . While performing with strict and exact fidelity, all their neutral duties, nothing will deter either the government or the people of the United States from exercising at their own discretion, the rights belonging to them as an independent nation, and of forming and expressing their own opinions, freely and at all times, upon the great political events which may transpire among the civilized nations of the earth. Their own institutions stand upon the broadest principles of civil liberty, and believing those principles and the fundamental laws in which they are embodied to be eminently favorable to the prosperity of states, to be, in fact, the only principles of government, which meet the demands of the present enlightened age, the President has perceived with great satisfaction, that in the constitution recently introduced into the Austrian empire, many of these great principles are recognized and applied".

Our Government also instructed our Minister at Constantinople to intercede with the Sultan for the relief of Kossuth and his companions, and Congress passed a resolution March 3rd, 1851, reciting:

"Whereas the people of the United States sincerely sympathize with the Hungarian exiles, Kossuth, and his associates . . . and whereas, if it be the wish of these exiles to emigrate to the United States, and the will of the Sultan to permit them to leave his dominions, therefore . . .

The President of the United States be and he hereby is requested to authorize the employment of some one of the public vessels which may be now cruising in the Mediterranean, to receive and convey to the United States the said Louis Kossuth and his associates in captivity".

When Kossuth arrived in the United States, Congress welcomed him by joint resolution, he was introduced by committees to both Houses, and presented by the Secretary of State to the President. Numerous cities extended public welcomes to him, the proceedings of which were published. A public dinner was given in his honor January 7th, 1852, which Webster and other members of the Cabinet attended, and Webster delivered an address, which was again made the subject of an Austrian official protest, which described it as "a revolutionary address, in which he openly held out encouragement to Hungary, spurring her on to a new rebellion, and formally proposed a toast for the speedy emancipation of that kingdom". ("Writings and Speeches of Daniel Webster", in 18 volumes, 1903, Vol. 13, p. 452 et seq. and Vol. 14, pp. 501-2). In the course of his answer, an official dispatch to our representative in Vienna, Secretary Webster wrote (Idem p. 503):

"The Chevalier Hülsemann, it appears, has yet to learn that no foreign government or its representative can take just offense at anything

which an officer of this Government may say in his private capacity. Official communications only are to be regarded as indicating the sentiments and views of the Government of the United States. If those communications are friendly in their character, the foreign government has no right or reason to infer that there is any insincerity in them, or to point to other matters as showing the real sentiments of the Government".\*

In an able article on "Propaganda" by Henry Wickham Steed, the distinguished journalist and authority on German history, in the "Encyclopedia Britannica" (14 Ed.) Vol. 18, p. 581 (et seq.), he says of Propaganda:

"The most notable instance is the injunction of the Founder of Christianity to the disciples—'Go ye unto all the world, and preach the gospel to every creature' (Mark XVI 15). Obeyed by the early Christians, this injunction was presently reflected in the official style of the committee of cardinals of the Roman Church in charge of foreign missions '*Congregatio propaganda fide*'. It is also held to warrant the activities of non-Catholic Christian missionary societies".

He adds:

"Before 1914 Germany alone among the great countries of the world carried it (official propaganda) on systematically. While other countries and other Governments engaged from time to time in official propagandist campaigns for definite objects, German propaganda was continued widespread. It was carried on chiefly by the Press Bureau of the German Foreign Office among the representatives of foreign newspapers resident in Berlin; by foreign press bureaus and telegraphic agencies affiliated to the German press bureau and to the German official telegraph agency; by the staffs of German embassies and legations abroad, and by the head office of foreign branches of German banks and shipping companies".

To enlarge on Mr. Steed's statement, it should be remembered that Germany, even since the war, has been most given to propaganda against the conduct of foreign nations. Even as to the matter of international protection of minorities residing in other states, she has been most vehement of all nations in the press, from the platform and by appeals to the League of Nations. She has been the only great power that brought violation of minority protective arrangements before the World Court, and that as against Poland in invoking the Polish minorities treaty. Even now, Hitler is so lacking in logic and a sense of humor that he continues to protest against such Polish action against Germany in the face of his own anti-Jewish program. It depends, of course, upon the question "whose ox is gored!" As to literature on the history of propaganda, Germany's seems larger than any other country's, including as it does, such works as Haas' "*Die Propaganda im Ausland*" (1916); Edgar Stern-Rubarth's "*Die Propaganda als Politisches Instrument*" (1921), and Gerhard Schultze-Pfäelzer's "*Propaganda Agitation Reklame*" (1923). The literature on the subject in English is also growing, and includes A.

\* See also Fuess' "Daniel Webster" II 249-56, and Edward von Wertheimer: "Ludwig Kossuth in Amerika—1851-1852" in "Preussische Jahrbücher Vol. 199 pp. 237-281.



Lawrence Lowell's "*Public Opinion in War and Peace*"; Bryce's "*Modern Democracies*", especially chapters 15 and 46; Higham's "*Looking Forward: Mass Education through Publicity*" (1920); Bertrand Russell's "*Free Thought and Official Propaganda*" (1922); Norman Angell's "*The Unseen Assassins*" (1932); Odegard's "*The American Public Mind*," and last but not least, the work of F. E. Lumley: "*The Propaganda Menace*" just issued (1933). The last-cited work contains separate chapters on "Propaganda and Politics", "Propaganda and War", "Propaganda and Patriotism", "Propaganda and Religion" and "Propaganda and Race". The last-named chapter begins with a quotation of George Moore's statement, "After all, there is but one race, humanity", and it pays its respect to the "Nordic" and the "Aryan" theories of race superiority, as well as to "Teutonism". He distinguishes between the more general use of the term "Propaganda", limiting it to "pernicious", and calls good propaganda "education". I shall use the term in its more general acceptance. An illustration of propaganda to stir up sentiment in favor of international reform was afforded as late as the 30th of May, 1933, before the League of Nation's Council, when Count Raczyński of Poland said in discussing the Bernheim position regarding Germany's violation of the Upper Silesian treaty:

"Formally, the Council can deal only with the Jews of Upper Silesia" (referring to the fact that the petition before it raised only the Upper Silesian issue), "but every member of the Council has the moral right to appeal urgently to the German government to insure equal treatment for all the Jews of Germany. For example a Jewish minority in Germany legally protected on a small portion of the territory of the Reich must lead to the conclusion that the present status of minorities is defective. At the next Assembly the question must be studied thoroughly, since it is one which the conscience of every nation is required to face".

(See a fuller report of this argument *infra* p. 58).

One of the earliest best-organized efforts at propaganda reaching into foreign lands was that of the English abolitionists against the slave trade at and around the time of the Congress of Vienna in 1814, participated in by Clarkson, Wilberforce, Grenville Sharp and Zachary Macaulay, and carried into the House of Commons by David Hartly as early as 1776. (See C. K. Webster's "*Foreign Policy of Castlereagh*" I, 412-424; 454-462). Quakers soon carried the movement into America, and without the same, neither the slave trade nor slavery would yet have been abolished. Leaders in the American movement against slavery, it will be remembered, were Garrison, Wendell Phillips, Lundy, Lovejoy, Sumner, Channing, John Brown and Harriet Beecher Stowe. Nor were Jews silent on the slavery question. We find vigorous denunciations of slavery emanating from Cremieux, David Einhorn, Michael Heilprin, Moses Mielziner and Gustav Gottheil, as against pro-slavery utterances of Judah P. Benjamin, David Yulee and Morris Raphall, while Berthold Auerbach, on the other hand, held the slave-dealer up to contempt in his graphic novel "*Das Landhaus am Rhein*", and Heinrich Heine declared that he would not emigrate to America, as that was a country which sanctioned human slavery! England's able history is graphically expounded in Sir

Thomas Erskine May's "*Constitutional History of England, 1760-1860*" in his two chapters on "*The Press and Liberty of Opinion*" pp. 102-244 of Vol. II of the American edition of 1886.

Had it not been for public agitation in and out of legislative chambers in the United States and abroad, Greece would scarcely have achieved her independence from Turkey, or Cuba in our own day from Spanish tyranny. Irish independence is another similar theme.

History is full of propaganda that led to warfare even on occasion, on account of religious persecutions throughout the centuries, notably in England under Elizabeth, Cromwell and Charles II on behalf of foreign Protestants, as is well pointed out in Prof. Lingelbach's "*Doctrine and Practice of Intervention*." Stowell's "*Intervention*" (p. 84) instances English diplomatic efforts, following popular agitation, to protect Protestants in Tuscany from persecution in 1855.

For convenience, I shall deal with non-Jewish precedents first, but I reserve for consideration later in this paper, the actual intervention by England and France in Syria in 1860, in the Mt. Lebanon region, following debates in Parliament and popular agitation in England and France. Still more impressive and notorious was the agitation in England in 1876 and thereafter on the part of statesmen of the Liberal party under Wm. E. Gladstone's leadership against Turkey, commonly known as the "Bulgarian Atrocities". They forced the hands of Disraeli and the Tories to desist from intended support of Turkey as against Russia in the Russian-Turkish War of 1876-7, ostensibly caused by Turkish atrocities against Bulgarian Christians. Detailed accounts of the incidents involved are to be found in Morley's "*Life of Gladstone*" (Vol. II, pp. 548-571,) in the chapter entitled "Eastern Question Once More 1876-1877", where reference is to be found to Gladstone's famous pamphlet, "Bulgarian Horrors and the Question of the East", published in 1876. The Tory side is considered in the Buckle-Monypenny biography of Benjamin Disraeli, (Vol. VI, pp. 1-369), particularly in Chapter II (pp. 41-73), entitled "The Bulgarian Atrocities". James Bryce won his spurs in public life at this period in this same cause, (H. A. L. Fisher's biography of Bryce I, 166 et seq.; Bryce's "*Modern Democracies*", II p. 378), and additional anti-Turkish propaganda was furnished by Mont Stuart E. Grant Duff's published lecture "The Eastern Question" (1876) and by Edward A. Freeman's pamphlet "The Turks in Europe" (1877). Despite Disraeli's triumph over Russia in 1878 at the Congress of Berlin, the defeat of his party in 1880 at Gladstone's hands has been traced back to these Bulgarian "atrocities".

The persecution of the Armenians by Turkey also led to much public agitation during a long series of years, beginning in 1895, as well as governmental representations, both in England and the United States. One contribution to this propaganda is Arnold J. Toynbee's "Armenian Atrocities—The Murder of a Nation", with a famous speech by Lord Bryce in the House of Lords in 1915. The official report of American governmental representations has been published very recently in the belated volume of "U. S. Foreign Relations for 1915 Supplement" pp. 979-990, entitled "Efforts in Behalf of Armenians and Jews in Turkey". The fact that the Great War was pending, and that the Armenians attempted to aid the enemies of the Government that oppressed them, did not prevent Sec-



retaries of State Bryan and Lansing and Acting Secretary Polk, together with Ambassador Morgenthau, from making official representations in their behalf, at times in conjunction with Italy, Holland and Germany. On April 27th, 1915, Secretary Bryan cabled to Ambassador Morgenthau:

"Russian Ambassador has brought to our attention an appeal made by the Catholics of the Armenian Church that this Government use its good offices with the Turkish Government to prevent the massacre of non-combatant Armenians in Turkish territory. You will please bring the matter to the attention of the Government, urging upon it the use of effective means for the protection of Armenians from violence at the hands of those of other religions".

Again on April 29th, 1915, the Secretary of State directed our Ambassador at Constantinople to "urge Turkish Government to protect both Armenians and Zionists". On May 2nd, 1915, Ambassador Morgenthau advised the Secretary that the

"Italian Ambassador, who had received instructions similar to mine, joined me in making strong representations to the Sublime Porte yesterday, according to your 626 . . . Both Austrian and German Ambassadors hesitate to interfere in the internal affairs of their ally, but I have persuaded Austrian Ambassador that massacres of non-Moslem seriously injure them as well as Turkish Government, and Austrian Ambassador has communicated this to his Government. We have succeeded in suspending movement against Zionists".

Under date of June 18th, 1915, our Ambassador reported that he had delivered a message from the Allies to the Grand Vizier, stating that he would be held personally responsible for further massacres, and Mr. Morgenthau continued that the Grand Vizier

"expressed regret at being held personally responsible, and resentment at attempted interference by foreign governments with the sovereign rights of the Turkish Government over their Armenian subjects. My unofficial efforts, though frequent and persistent, have resulted in occasionally mitigating the hardships, but have failed to dissuade them (from) their course, which they attempted to justify on the grounds of military necessity".

On August 12th, Mr. Morgenthau reported that the German Ambassador had made a strong protest to the Sublime Porte.

On September 3rd, 1915, he reported (p. 988) that "the Minister of War has promised to permit departure of such Armenians to the United States whose emigration I vouch for as bona fide", but Acting Secretary Polk answered, on September 22nd, "that difficulties in the way of wholesale emigration of Armenians are unsurmountable", but suggested raising funds for relief, including repatriation or assisting emigration.

On October 4th, 1915 (p. 988) Secretary Lansing cabled that reports "have aroused a general and intense feeling of indignation among the American people. You are instructed to continue to use your good offices for the amelioration of the condition of the Armenians and to prevent the continuation of the persecution of the Armenians, informing Turkish Government that this persecution is destroying the feelings

of good will which the people of the United States have held towards Turkey".

On October 6th, 1915, Secretary Lansing wired:

"Can you secure permission to leave Turkey for Armenians whose relatives in America will pay for expense passage?"

and Ambassador Morgenthau cabled back on Oct. 9th that the "Sublime Porte will consider applications for emigration to the United States".

On October 12th, Minister Van Dyke cabled that "Netherlands' minister at Constantinople was instructed to confer with U. S. Ambassador in support of efforts to prevent Armenian atrocities".

On October 8th, 1915 the German Ambassador here forwarded to our Secretary of State a copy of a remarkable communication delivered by the German Ambassador at Constantinople to the Turkish minister of Foreign Affairs, which contained the following passage:

"German Embassy is constrained to remonstrate once more upon those horrible deeds and to decline any responsibility for the consequences they may involve. It finds itself under the necessity of drawing the attention of the Ottoman Government to that point all the more as public opinion is already inclined to believe that Germany as a friendly power allied to Turkey may have approved or even instigated their acts of violence."

Perhaps the earliest international movement in aid of persecuted Jews was that on behalf of the Jews of Bohemia, whose expulsion Empress Maria Theresa ordered in 1744. England and Holland were joined in that movement by Venice, Saxony, Mayence, Brunswick, Poland, Turkey and the Pope, but it can be more conveniently considered hereinafter, under governmental representations and action.

The agitation over the Damascus blood accusations of 1840 was worldwide, our own country's course being only incidental. The "Jewish Encyclopedia" article on the "Damascus Affair" contains a valuable bibliography, and Sir Moses and Lady Montefiore's "Diaries" throw much additional light on the same. Latterly, the same was supplemented materially by an interesting article in the Frankfurter "Jüdisches Literarisches Jahrbuch" for 1927 by Dr. N. M. Gelber entitled "Oestereich und die Damascus Affair im Jahre 1840," as also Posener's new life of Cremieux.

Still more recently, new material of a striking character supplementing the same from the British archives was published in the "Transactions of the Royal Historical Society" (Series 4, Vol. 12), p. 163 at pages 183-5, in an article by F. S. Rodkey, entitled "*Lord Palmerston's Policy for the Rejuvenation of Turkey 1839-1841*", which displays Palmerston as special protector of the persecuted Jews in Turkish dominions. In 1839 he instructed the British Vice Consul in Jerusalem that

"one of his duties would be to afford protection to Hebrews of the Holy Land".

On Nov. 24th, 1840 he issued further instructions that "Jews shall be permitted to transmit through British consular authorities and the British embassy at Constantinople any complaints which



they might wish to make to the Porte against Turkish officials in Palestine”.

After the Congress of Berlin of 1878, international protection of religious minorities may be said to have become a principle of international law. In *Secretary Hay's famous "Rumanian Note"* of 1902, with particular reference to the Treaty there adopted governing the Balkan principalities, he wrote that he

“does earnestly appeal to the principles consigned therein, because *they are the principles of international law and eternal justice*” (infra p. 40).

The right to make such international appeal was thus greatly enlarged from that date on, and in the Minority Treaties of 1919, infraction of the rights of religious, racial or linguistic minorities is therefore in terms described “as a matter of international concern” and violations of those treaties placed within the jurisdiction of the League of Nations and the World Court. *The famous letter of Clemenceau as president of the Peace Conference of 1919, dated June 24th, 1919, which accompanied and expounded the Polish Minority Treaty\* so treats these general principles of justice and liberty as “an established tradition”, as “an obligation which they (the Powers) cannot evade, to secure in the most permanent and solemn form, guarantees for certain essential rights, which will afford to the inhabitants the necessary protection”.*

In the plenary session of the Peace Conference of May 31st, 1919, at which these provisions were considered (Luzzatti's “God in Freedom” p. 787 et seq.), M. Clemenceau pointed out that the reason why such provisions were imposed only on certain new or enlarged states was that

“in the matter of minorities, everyone's history has not been quite the same. Some distinctions are necessary in this connection”.

It was erroneously assumed that Germany, whose Constitution had, for decades, granted absolute equality of civil, political and religious rights, regardless of race, creed or language, needed no express external imposition of such international sanctions, any more than England, France, Italy or the United States did. Moreover, as is further considered hereinafter (pp. 43-9), Germany, while seeking such international protection of her minorities as against Poland and other new states, expressly pledged herself to accord equal treatment to her minorities. To go back, however, to 1882.

Two incidents may be singled out with particular reference to notable public meetings which they gave rise to, which illustrate the value of popular agitation and protests and their relation to Governmental representations and actions.

The first is an account of the famous *Mansion House meeting in London on February 1st, 1882* concerning “*Treatment of the Jews in Russia*”, (reprint of which the Joint Foreign Committee of London has just issued in pamphlet form, together with account of a meeting at the Guild Hall, London, December 10th, 1890, which for lack of space I shall not deal with herein). The Mansion House meeting dealt with Jewish persecutions in Russia, following the enactment of the infamous Russian

“May Laws”, and I am quoting from the proceedings of the same, passages particularly apt today, relating to the two branches of the subject I have in mind. Then, as now, England held numerous public meetings of protest at the instance particularly of distinguished Christians, and upon the call and under the chairmanship of mayors of large cities in England.

At the Mansion House meeting in question, the LORD MAYOR OF LONDON, in the course of his address as Chairman, said:

“But if you look at the memorial, with the roll of names attached to it, you will see that every creed of religion is represented . . . that the great Christian world, severed and divided as it is, has combined in this memorial in requesting me to call this meeting. If, again, you take the political creeds of this country, you will find that men of all parties, whatever may be their views upon political matters, have combined in the same request. I feel, therefore, that I shall have the sympathy, not only of those who are present, but that the whole country is with us on this platform, and with those gentlemen whom I shall have the honour, presently, to call upon to propose some resolutions”.

The ARCHBISHOP OF CANTERBURY wrote of his desire “to enter an emphatic protest against the recent outrages to which the Jewish people have been exposed. Unable to attend myself, I have asked Canon Farrar to be present and express the horror with which I contemplate the disgrace brought on the Christian name by these shameful persecutions”.

ALFRED TENNYSON, the Poet Laureate, wrote:

“I am dismayed by the reports of this madness of hatred against the Jews, whatever the possible provocation, and of the unspeakable barbarities consequent. If they are not universally denounced, it can only be that they are so alien to the spirit of the age as to be almost unbelievable. The stronger the national protest the better. Our Government, however, may have reason to fear that it may do more harm than good by official intervention”.

REVEREND CHARLES SPURGEON wrote:

“As a Christian, I feel that the name of our Redeemer is dishonoured by such conduct on the part of his professed followers. As a Nonconformist and a Liberal, believing in the equal rights of all men to live in freedom and safety, I must protest against a state of things in which the Jew is made an outlaw. Lastly, as a man, I would mourn in my inmost soul that any beings in human form should be capable of crimes such as those which have made Russia red with Israelitish blood. But what need even of these few sentences? The oppressed are sure of advocates wherever Englishmen assemble”.

The EARL OF SHAFTESBURY, distinguished philanthropist and statesman, said:

“There may be, or there may not be, a precedent for such a meeting; but I hold that *in these days of what is called the ‘solidarity of nations’, of enlarged responsibilities and greatly-increased force of public opinion, if there is not a precedent it ought to be established on this very day.* I am glad that the people of England have come forward to make a

\* Luzzatti's “God in Freedom” (pp. 745-750).



solemn declaration that, in their belief, *there are moral as well as material weapons; that the moral weapons in the long run are the more effectual and the more permanent; and that it is our duty to resort to those moral weapons when for use of the material we have neither the right nor the power* . . . My lord, I have a very strong feeling—and I believe we all have a very strong feeling—as to the power of any open and constantly-repeated affirmation of a great principle founded upon justice and humanity. It carries with it prodigious weight. Have we not seen in times past, and in the present day the marvellous influence produced by a manifestation of public opinion founded upon such attributes? Even the Sultan of Turkey succumbs to public opinion, and the Shah of Persia yields to it. Napoleon, in the very plenitude of his power, as we have read in recent works, so feared the influence and power of Madame de Stael that he would not allow her to come to Paris, because, he said, if she came, it would injure his reputation, and influence public opinion of the whole world against him. Was the stern and powerful Emperor Nicholas indifferent to public opinion, and especially the public opinion of England? Far from it. I know, from conversations held with him by one of my most intimate friends, who reported to me what had passed, that the Emperor Nicholas felt deeply and acutely the public opinion of England . . . My lord, we follow the details with horror and disgust, and we are come here for the purpose of expressing our opinion and of praying God that a stop may be put to atrocities which have afflicted and disgraced the generation and the age in which we live . . . This is a free meeting of free citizens, and we came here to express our deep regard for the human race. It is not simply because those who are persecuted are Jews that we are met here; Englishmen would, under similar circumstances, feel the same sympathy equally for Buddhists, Mahomedans, or Pagans. I know that many have a deep and special feeling towards the Hebrew race; I have it myself, I confess, most deeply and most strongly; but we are met here upon one grand universal principle. If there is one thing on earth which an Englishman loves better than another it is freedom—and it is the desire of every true Englishman that every one should be as free and as happy as he is himself . . . And, after all, if we approach the present Emperor, or in any way appeal to his Imperial Majesty, what are we asking for? Are we asking anything to lower his dignity, or abate his power? Nay, on the contrary, are we not asking him to do that which would conduce very much to his honour? Are we not asking him to do justice to a large body of his loyal and suffering people? Are we not simply asking him to restrain violence, murder, outrage, and spoliation? Are we not asking him to be a Cyrus to the Jews and not an Antiochus Epiphanes? Are we not asking him to enter upon the greatest and noblest exercise of power . . . to 'undo the heavy burdens,' and to 'let the oppressed go free'? My lord, this is the purpose and object of our meeting; this will be the prayer of our Memorial, and may God in His mercy prosper it to the removal of these horrors and to the comfort of the Jewish people, on whose behalf we are gathered together. His lordship concluded by moving 'That in the opinion of this meeting the persecutions and the outrages which the Jews in many parts

of the Russian dominion have for several months past suffered, are an offence to civilization to be deeply deplored' ”.

THE BISHOP OF LONDON said:

“A few years back our country was horrified with accounts of atrocities committed in what were then provinces of the Turkish Empire. The country was moved, but it had the consolation of knowing that though the sufferers were Christians, the perpetrators were almost all of another creed. Now, alas! the case is the reverse. Those who have perpetrated these atrocities are men who bear the name of Christians; so that the persecutions of the Middle Ages, on which history has long set the stamp of reprobation, have been reproduced in this latter part of the 19th century, and the dark stain of rapine, lust, and murder is let fall again upon the fair fame of Christianity. We do feel this; but I will venture to say that not in this crowded room alone, not in this metropolis merely, not in the cities and large towns of England only, are the sympathy and horror felt which have been expressed before you and have called you together today, but in the most quiet parsonages and in the most retired villages throughout England there is the same feeling of mingled horror, grief and shame that now in an age of civilization, in days when we think ourselves, and in some respects certainly are, better than our fathers, we find a Christian nation persecuting Jews. Knowing this, my Lord Mayor, I venture to assume, speaking here from this platform, that I may without presumption,—or if it be presumption it will be easily pardoned,—in the name of every member of the Church of England second the resolution which Lord Shaftesbury has proposed”.

CARDINAL MANNING, on behalf of the Catholics, said:

“It is because I believe that we are high above the tumults and conflicts of party politics, that we are in the serene region of human justice, that I am here today . . . Further, I may say that, while we do not intend to touch upon any question in the internal legislation of Russia, still *there are laws larger than any Russian legislation, laws which are equally binding in London, in St. Petersburg, and in Moscow—the laws of humanity, of nature, and of God—which are the foundation of all other laws; and if in any legislation these are violated, all nations of Christian Europe, the whole commonwealth of civilized and Christian men, would instantly acquire a right to speak out loud.* And now, my Lord, I must touch upon one point which I acknowledge has been very painful to me. We have all watched for the last twelve months what is called the anti-Semitic movement in Germany. I look upon it with a twofold feeling; in the first place, I look upon it with abhorrence as tending to disintegrate the foundations of social life, and, secondly, with great fear lest it may tend to light up an animosity which has already taken fire in Russia and may spread elsewhere . . . I have also read with pain accounts of the condition of the Russian Jews, bringing against them accusations which, if I touch upon them, I must ask my Jewish friends who hear me to believe I reject with incredulity and disgust. I have read that the cause of what has happened in Russia is that the Jews have been pliers of infamous trades, usurers, immoral, demoralizing, and I know not what. When I read these accusations, I ask, 'Is outrage the remedy?



Will they be cured by outrage, murder, abominations of every sort? Are they not learning the lesson from those who ought to teach a higher law? Again, if it be true, which I do not believe, that they are in the condition described, are they not under penal law? Is there anything that can degrade men more than to close against their intelligence, energy, and industry, all the honourable careers of public life? . . . *Is there any career of public utility, any path of honour, civil or military, in which the Jews have not stood side by side with their countrymen? If the charge is brought against the Jews of Russia, who will bring it against the Jews of England? For uprightness, for refinement, for generosity, for charity, for all the graces and virtues that adorn humanity, where, I ask, will be found examples brighter, or more full of true human excellence, than in this branch of the Hebrew race . . .* The other remedy I believe to be this—a stern and rigorous execution of justice upon evil-doers, coupled with an equally stern and rigorous concession of all that is right in the law of nature and of God to every man. All that is necessary for the protection of life and limb and liberty and property—all that constitutes human freedom—this, and nothing less than this, will be the remedy for the evils of which the Minister of the Interior complains. Now, my Lord, you have spoken very hopefully of what may be the effect of this meeting. Do not let us overrate it. If we believe this meeting will have done the work, and that we may cease to speak, I am afraid its effect will not be what we desire. Neither let us underrate the effect. I believe that all through England, I may say all through the United Kingdom, there will be a response to this meeting. Manchester and Birmingham have already begun, and wheresoever the English language is spoken throughout the world, that which your Lordship has said so eloquently and powerfully will be known. I believe that at the very moment that we are assembled here a meeting of the same kind is being held in New York. And what is done here will be translated into every language of Europe. *It will pass even the frontiers of Russia. Like the light and the air, it cannot be excluded; wheresoever there is human sympathy upon earth the declarations that are made here and elsewhere will meet with a response that will tend to put an end to these horrible atrocities.* There is but one word more that I have to say. I have endeavored to deal with this question calmly and fairly. I have spoken on the importance of equal political justice; I should be ashamed if I were to cease to speak without saying a word on what will appeal strongly to the sympathies of Christian men. *There is a Book, my Lord, which is common to the race of Israel and to us Christians. That Book is a bond between us, and in that Book I read that the people of Israel are the oldest people upon the earth. Russias and Austrias and Englands are but of yesterday compared with the imperishable people, which—with an inextinguishable life and immutable traditions, and faith in God and in the laws of God, scattered as it is all over the world, passing through the fires unscathed, trampled into the dust and yet never combining with the dust into which it is trampled—lives on, still a witness to us, a witness and a warning. We are in the bonds of brotherhood with it. The New Testament rests upon the Old.*

They believe in half of that for which we would give our lives. Let us, then, acknowledge that they are united with us in a common sympathy . . . My Lord, I only hope that not one man in England, who calls himself a civilized or Christian man, will have it in his heart to add by a single word to that which this great, and ancient, and afflicted people suffer, but that we shall do all we can by labour, by speech, and by prayer to lessen if it be possible, or at least to keep ourselves from sharing in sympathy with, these atrocious deeds”.

CANNON FARRAR said:

“My Lord Mayor, when a few years ago we got the news of Bulgarian atrocities all England thrilled from end to end with horror and detestation. I, for one, fully concede that the position of the Turkish Government in relation to the Bulgarian atrocities was wholly different from the relation of the Russian Government to the outrages on the Jews; but the crimes were analogous, and in many instances identical; and *why, when the Bulgarian atrocities were denounced with burning indignation, are the annals of the Russian atrocities to be listened to with freezing apathy? Is it because the sufferers in one case were Bulgarians and in the other are Jews? It is because the offenders in one case were Mohammedans and in the other are Christians? Is it because one Government was weak and the other is mighty? Is it because in one case the atrocities were committed amid the turbulence of war and in the other in the depths of peace? Is it because one was a sort of spasm in a comparatively transient agony and the other the outcome of deep-seated and long-continued disease? It is because we feel friendship for Russia that we claim the right to remonstrate, as we have always done in such cases. It is a positive duty that England should make her voice heard, and that she should not speak ‘with bated breath or whispering humbleness’.* The voice of England has always been heard, thank God! on the side of the oppressed. We all know how Queen Elizabeth received the French Ambassador in London after the massacre of St. Bartholomew. We know how 5,000 brave Englishmen went to fight in the Low Countries against the tyranny of Alva. We know in what a voice of thunder Cromwell demanded toleration for the Albigenses. We know in what tones Milton wrote after the massacre in Piedmont. It has been part of our traditional policy to show our sympathy with down-trodden nationalities. We have sympathized with Poles, and Syrians, and Slavs, and Neapolitans. We have fought for Greeks at Navarino, and even for Turks at Alma and at Inkerman, and we have fought for what we believed to be the liberties of Europe again and again, from the days of Blenheim and Ramillies to those of Talavera and Waterloo. The Jews are at once the noblest and the most trampled-upon nationality in the world. Their religion was the cradle of Christianity. The Jews have among them names which, as Sir Walter Scott says, as compared with any of our names, are like the gourd to the cedar, and which go back to the time when the voice of God shook the mercy-seat between the Cherubim. It is to the Jewish nation that humanity owes the deepest debt of gratitude, and it is on that nation that humanity has inflicted the deepest wrongs. I will detain you but



one moment longer. We are approaching Russia in the most respectful and the most friendly spirit; and because we are friendly and because we are united, and because the faithful wounds of a friend are better than the deceitful kisses of an enemy, we ask Russia to do what England has done, and give the Jews equal rights and privileges. We have abolished persecutions prolonged from age to age, we have done away with the Ghetto and the torturing whip, and the garb's disgrace, and such summons to Christian fellowship; we have abolished all such things, and almost every other great nation has, like ourselves, accorded to the Jews the rights of civilized men. Surely Russia will not stand alone in her treatment of the Jewish nation . . . We believe that she will follow the example of other European nations. It is because we believe that good is stronger than evil, and justice and mercy stronger than hate and wrong, that we feel perfectly sure that this meeting will not have been held in vain. We are here to raise the voice of England in the cause of mercy and justice, and we believe that that voice will be expressed in no uncertain tones".

JAMES BRYCE said, (and his address is particularly interesting in its treatment of the relationship between public individual protests and Governmental representations) :

"I feel honoured in being asked to address this meeting. I happen to be one of those who took an active part in the agitation which was raised by the Bulgarian massacres five years ago, and suppose it is for that reason that I have been asked to bear witness, or rather to confirm the testimony already given, that *those who then spoke out so strongly against atrocities committed by Mohammedans against Christians feel now similar indignation against the attacks made by Christians upon Jews*. I do not indeed, intend to draw a parallel between the case of the Bulgarian atrocities and the case of the recent cruelties in Russia, because in what has lately happened in Russia we have to charge the Government of that country with remissness or neglect, not with complicity, while the fiendish cruelties which took place in Bulgaria were actually approved by the Turkish authorities, who promoted some of their most notorious perpetrators. But when all due allowance has been made for possible exaggerations with regard to the persecution of the Jews in Russia there remains quite enough not only to justify the holding of this meeting, but to make the holding of it a matter of necessity and duty. We are bound to express our opinion as to the conduct of those who have joined in the commission of these horrors even with a stronger voice than is heard from any other nation in Europe, because we in England have admitted the Jews to complete political and civil equality with Christians, because Jews have been allowed to sit on the highest seats of justice, because many of them are to be found in the learned professions, and because there are so many Jews of whom we feel proud when we think of them as our fellow-countrymen. Our own experience, as well as the political principles we hold, has convinced us that the true way to do justice socially to men in the position of the Jews and to make them good members of society is to grant to them the fullest political and civil equality. I will not say any more on that point

because it has already been dealt with by previous speakers. The resolution which I have to propose is as follows: 'That the Lord Mayor be requested to forward a copy of those resolutions to the Right Hon. W. E. Gladstone and the Right Hon. Earl Granville, in the hope that Her Majesty's Government may be able, when an opportunity arises, to exercise a friendly influence with the Russian Government in accordance with the spirit of the preceding resolutions'. Now that resolution does not suggest—it would not be right to suggest—what is commonly called diplomatic action. It would be a mistake, a great mistake, for us to call upon the Government for diplomatic action in a matter of this kind. We know how sensitive the Governments of Europe are as regards diplomatic representations in matters which affect their own conduct . . . It is because we know that diplomatic action, in the strict sense of the term, is impossible, that we think a meeting like this of such great value. *A meeting like this is, in fact, a far better representation of the feelings of the people of England on the subject than any diplomatic action could be.* The spontaneity of this meeting, the enthusiasm that characterizes it, the fact that there are assembled on this platform persons of almost every political party and of almost every religious denomination, and that not a voice has been raised throughout the country against holding this meeting, although a fortnight has passed since it was convened, these things afford the best proof that the heart of England is stirred on this question, and that the voice of England is heard in its proceedings . . . This burst of brutality is a phenomenon to be found all over South-Eastern Europe, and it is a phenomenon which is not confined to the less civilized peoples, for it has found expression, not, indeed, in so terrible a form, but it has found expression in the so-called anti-Semitic movement which we have seen with so much regret in Germany. *It is, indeed, enough to make one blush for modern civilization to think that a people like the Jews—a people whose ancient literature is so sacred in our eyes, on whose ancient religion our own is based, who have rendered such eminent services to learning and science—in the nineteenth century should be subjected to such terrible persecution.* What we may fairly say to our Government under these circumstances is this:—*'We recognize the obstacles to direct diplomatic representations. We leave it to you how, when, and in what manner you will express to the Russian Government the sentiments which we entertain regarding these persecutions, and which we believe you share. But we hope and trust that you will discover some appropriate mode of expressing them, and of using your influence, the influence of England, on behalf of these unhappy sufferers'*. It is because I believe that this question is one upon which all Englishmen are agreed, because this movement is far above the range of party politics, that I believe we may have confidence in our Government . . . What I understand this resolution to do is to recognize the difficulties which stand in the way of formal diplomatic action, and to strengthen the hands of the Government by declaring that we hope and trust that opportunities will not be wanting for making the voice of England heard in this matter. I understand that we desire to encourage the Government to speak when they have an opportunity of doing so, and to assure them that when they do speak



*it will be with the voice of united England. We desire to see an extension to every country of those great principles of religious toleration and civil equality which we were the first to establish as a nation, and the maintenance of which, while it conduces to our greatness and our happiness, is an inseparable bond between us and our Jewish brethren".*

HONORABLE LYULPH STANLEY, M. P. said:

"The first resolution is an important one because it expresses the detestation which all humane men must feel at the cruelties which have been recently committed in Russia; but the second resolution is to my mind more important because it touches not only the evil but also the remedy. I think *we must all feel that this being a case of race-hatred, the only way to remove the spirit which creates these outrages is to treat all the inhabitants of the country as citizens in common and to make them all equal as regards civil rights.* The object of the resolution which I am seconding is that the two preceding resolutions should be laid before Lord Granville and Mr. Gladstone, *in the hope that our Government may be able to exercise some influence over the Russian Government and thereby secure better treatment for the Jews.* I entirely agree with Mr. Bryce as to the extreme delicacy of diplomatic action and the difficulty of any intervention on the part of our Government which would be at all likely to prove useful. The remedy for the evil should be thorough".

The notable mass meeting held in New York City, February 1, 1882, at Chickering Hall was also very significant in its bearing upon the points herein under consideration. Apart from contemporary newspaper reports, the only extant account seems to be in a rare pamphlet published in New York in 1882, containing accounts of both the London and the New York meeting of the same date. The New York meeting was called at the request of ex-President U. S. Grant, Roscoe Conkling, and other distinguished American citizens, including the two leading German Americans of the day, Carl Schurz and Oswald Ottendorfer. MAYOR GRACE, who presided, said in the course of his brief address:

"In the name of freedom of thought, of religious liberty, I feel that we are called upon to *protest against the tyrannical illiberality of a government which permits the persecution of an entire people for the simple reason that they are of a peculiar race and peculiar faith . . .* I am strongly reminded of the words of Pope Innocent IV in a letter which he wrote in defense of the Jews in 1247, where he says: 'What a shame it is they should be more miserable under Christian princes than their ancestors were under Pharaoh'".

The chief address was delivered by ex-Secretary of State WILLIAM M. EVARTS, the other speakers being chiefly clergymen of varying Christian denominations. Mr. Evarts said:

*"But it is said: do not nations correspond only through governments, and are not governments clothed with complete authority within the territories over which they rule, and are they not jealous of any intimations or suggestions made by friendly governments, however close their amity may be? Well, gentlemen, the time has gone when kings, couriers*

*and ships of war were the only messengers between nations, and when state proclamations and announcements of ambassadors were the only messages that passed between nation and nation. All this wonderful apparatus of communication which the world rejoices in and uses every day; all this vast apparatus was not made for men and the transference of people with people, but the common diffusion of the world's common property in the interchange of thought, of feeling and of purpose. And nations now speak directly to nations, under no constraint or formality, and under no difficulty of making themselves understood . . . If oppression of the Jewish population by the government has given provocation to these outbreaks—and of that there is no history and no imputation that I have heard—but if it should be so, the Russian nation, I say, and its great monarch should learn this lesson: that whenever the law treats with unequal consideration different races and faiths, then human nature, that is above and beyond all law, pleads and works ever for the oppressed, and the oppressors' day is fixed, though it may be remote".*

The Kishineff massacre in Russia of 1903 led to holding of similar meetings of protest in the United States, notably one at Carnegie Hall, New York, May 27th, 1903, over which Mayor Seth Low presided, which I treat herein in similar fashion to that of the Mansion House meeting in London, of 1882. Both of these meetings are significant in that the rights of American citizens were not involved in either, but the protests were directed against the persecution of Jews in a foreign country. There was, however, less offense against the principles of civilization in connection with the Kishineff massacres, because the government there involved claimed that the massacre occurred without its complicity, while the German persecutions of today are avowedly governmental. Certainly so, as far as the "cold pogrom" is concerned, which deprives the Jews of their citizenship and ability to earn their livelihood in substantially all the professions and economic pursuits of life, deprives them of educational opportunities in the colleges and schools, and after forcing them to starve, even denied them their share of the public relief to which the taxes rung from them so largely contributed. Cyrus Adler's work "*The Voice of America on Kishineff*" published in 1904 by the Jewish Publication Society of America contains an exhaustive account of the meetings held, together with related matter. Said MAYOR LOW, the Chairman of the Carnegie Hall meeting (page 118):

"But here I can say what I did not there—for this is a meeting held under Christian auspices—that *in the name of our religion we grieve that such a stain should be cast upon it.* Russia is a friendly Power to the United States, and there are especial reasons why Americans think kindly of her; but not for this cause should we be silent now. Nay, rather, because we desire that the two nations may continue to be true friends, we beg her so to deal with those who are to blame for this shameful outrage as to make it impossible for such a thing to happen again within her borders. We beg of her to give more liberty to her Jewish subjects; for we may properly say that in freedom of opportunity and not in restriction of privilege, for Christian and Jew alike,



has been found, here in New York, a cure for such disturbances as those that in Russia have recently shocked the world. What New York has done for 250 years Russia can do, if she will. May God put it into her heart to do so."

CARL SCHURZ said (pp. 120, 121).

*"The persecution and maltreatment of human beings on account of their race or their religious belief is always an offense not only unjust to the victim, but also degrading to the offender. But the persecution and maltreatment of the Jews, as mankind has witnessed it, and is now witnessing it in several countries, has been not only especially barbarous in the ferocity of its excesses, but in a singular degree self-debasing and cowardly in the invention of the reasons adduced for its justification— (p. 121). These horrors are only one more revelation of the ulterior tendency of a movement which here and there even assumes the mask of superior respectability. Here is the whole question again brought before the tribunal of the conscience of mankind. May this event serve to put in clearer light the fact that the history of the world exhibits no more monumental record of monstrous injustice than the persecutions inflicted upon the Jews during so many centuries. We may then also hope to see the other fact universally recognized that wherever the Jewish race, with its wonderful vitality and its remarkable productiveness of talent and energy, enjoys the equal protection of just laws and a due appreciation of its self-respect, it will, far from remaining a race of aliens, furnish its full contingent of law-abiding, peaceable, industrious, public-spirited and patriotic citizenship, vying with the best."*

EX-PRESIDENT GROVER CLEVELAND said: (pp. 123, 124, 125).

*"The influences which have called us together tonight grow out of our recognition of the promptings of Christian civilization and our dutiful devotion to the best and deepest of our national characteristics. This demonstration furnishes cheering and reassuring evidence that our American sympathy for the oppressed and abused, wherever they may be, our American love of humanity, and our attachment to justice and right, are still active and unimpaired. There is another American trait inwoven with the warp and woof of our national character, which is here exhibited in most gratifying freshness and strength. Our people, when their sympathies are touched, when their humane instincts are challenged, and when their hatred of oppression is aroused, are not afraid to speak; and in such circumstances it is not their habit to smother or cautiously soften their words."*

*"Every American humane sentiment has been shocked by a late attack on the Jews in Russia—an attack murderous, atrocious and in every way revolting. As members of the family of mankind, and as citizens of a free nation, we are here to give voice to the feeling that should stir every true man, and every American worthy of the name. There is something intensely horrible in the wholesale murder of unoffending defenseless men, women and children, who have been tacitly, if not expressly, assured of safety under the protection of a professedly civilized government. Such things give rise to a distressing fear that even*

*the enlightenment of the twentieth century has neither destroyed nor subdued the barbarity of human nature, nor wholly redeemed the civilized world from 'man's inhumanity to man' . . . Our public servants should hear us speak; but we certainly ought to be justified in trusting the care of our national honor and duty in the premises and the enforcement of the humane instincts of our people, so far as this may be within governmental action, to those charged with the responsibility of managing our public affairs."*

*"In the meantime, let the people of the United States, gathered together in such assemblages as this, in every part of the land, fearlessly speak to the civilized world, protesting against every pretense of civilization that permits medieval persecution, against every bigoted creed that forbids religious toleration and freedom of conscience, against all false enlightenment that excuses hatred and cruelty towards any race of men, and against all spurious forms of government protection that withhold from any human being the right to live in safety and toil in peace."*

EDWARD M. SHEPARD said: (pp. 133, 134, 135, 136).

*"The misery, the murder, the hardship and the ostracism of the Jews in Kishineff or the Jew anywhere else, or of any other race or of men of any other religion, is your care and my care, is the care of every nation, or ought to be, and the care of every creed, or ought to be . . . What can you and I do? These Russians in Bessarabia, if they ever hear of any who are here to-night, or ever hear of New York, will they listen to what we say? Yes, they will listen. They may be made to listen by those whom we can help to make listen. There sits upon no throne a man so powerful that he himself is not largely a creature of this public sentiment of the world. Therefore it is that you and I may utter a voice which shall be heard in St. Petersburg . . . And believe me, friends, no power on earth with its military and naval forces can override for one moment the sentiment of humanity to which we here to-night give voice. When this same anti-Jewish mania was illustrated in the republic of France in the Dreyfus case, every wise man knew that France for the moment was weakened to its center. Every time we know of a persecution in Russia directed against Jews, because they are Jews, we see beneath the veneer of that rapidly extending but imperfect civilization . . . The hour is late, but one word more. How shall we best test a government, or a civilization? Believe me, the crucial test is always to be found in its treatment of the minorities. Where the majority in faith, in power, in fashion, where the majority respects the minority—those who look differently, those who believe differently from them—there is the highest civilization. Where you have a government to protect the minority, to protect the unpopular, to protect, if you please, those who without crime or wrong are odious, that government is the best government. And I say that, not by way of further rebuke to the tyranny of Russia, which we declare to-night, but I say it of any land . . . We are here to respect one another; whatever the creed, whatever the race, whatever the belief, we are of one blood, one before God and humanity. And when that law, whether in greater things or in lesser things, is vio-*



lated, there is crime and there is wrongdoing. Friends, may this voice of New York go to Russia and to St. Petersburg, and to every corner of civilization and may it, of all things, penetrate to the heart and the mind of every American citizen, that the more we read of wrong-doing in other lands, *we shall make it certain that nothing in any way resembling it shall disgrace the Stars and Stripes, nor disgrace American sovereignty the world over.*"

At a related Philadelphia meeting called together on account of the Kishineff massacres, JUDGE MAYER SULZBERGER, Chairman of the meeting, on July 12th, 1902, said (pp. 4, 5):

"The policy of the Russian Government is to persecute such of its subjects as are not of the Greek Church. The existence of Protestant and Catholic world powers tempers the cruelty with which Protestants and Catholics are pursued. *The absence of a Jewish world power aggravates the ill-treatment of the Russian Jew.*

"*We who sympathize with the latter must therefore appeal to the conscience of the world—to public opinion. Intangible and invisible, its existence is often doubted and its effect ridiculed, both by those who are with us and those who are against us . . . Both positions show that Russia is summoned to the bar of civilization, appears and pleads, though the appearance is reluctant and the plea quibbling, untrue and self-contradictory.*

"Without hatred or malice toward Russia or its rulers, we must proclaim the wrong that she is doing in pressing the life out of her Jewish subjects by law and administration and in encouraging outright murder, and worse, by the example of her policy . . . But whatever the official policy or procedure may be, *our duty is to arouse public opinion all over the world in the firm faith that it will enter Russia and influence it, despite cordons and censorship.*

"For that purpose we are here to-day. To this campaign of publicity and protest, this peaceful struggle for humanity and justice, 'not by might nor by power, but by the spirit of God', we here devote ourselves until the end be attained."

SENATOR ISIDOR RAYNER wrote to a Baltimore meeting of protest held on May 17th, 1903: (pp. 28-29).

"The policy of the Russian government is at war with the Providence of God, and if there is any justice in this World, some way must be found which will cause its rulers to abandon their creed of intolerance and oppression, and in place of it establish the principles of justice and humanity. *An earnest appeal from this government, emanating from its legislative branches through the intervention of friendly offices, in my judgment, could bring about the desired results, and every effort ought to be made to obtain this action. It has been done at other times in our history, and it will be done now if a combined pressure is brought upon Congress to take action in the matter. I can only say to you that a thrill of horror fills every impulse of my being as I realize that in this age of progress and enlightenment the liberal governments of this world*

*should stand by with supreme indifference as this procession of human beings marches on to the gates of martyrdom and despair.*

"I am willing in any way I can to unite with you in agitating this subject until the day shall come when this torture of the innocent shall cease and when they shall receive the human rights and human recognition that they are entitled to by every law of justice and humanity. This is all they claim. *God has given them this inheritance, and it ought not in this day of religious freedom to be in the power of any government upon the face of the earth to deprive them of it.*"

JANE ADDAMS said at a Chicago meeting on May 18th, 1903: (pp. 57-8).

"We are here to express our disapprobation of Russia's cowardice in failing to protect her citizens from massacre, and we are here also to seek a remedy. *Perhaps the saddest part of this all is that it has broken down the sentiment that all over the world was leveling ranks and obliterating race prejudice. It has put civilization back to that extent.* Let us hope that it will also react, by calling attention to this unjust prejudice, in assisting to remove it. In addition to the sorrow we feel for the poor victims and sufferers, let us also turn to the mystery in which these outbreaks had their roots. Let us daily do what we can to allay this horrible race hatred which has been at the bottom of so many horrors in the past."

JUDGE RUFUS B. SMITH said at a Cincinnati meeting on May 18th, 1903: (p. 64).

"But we are asked—are we not powerless to prevent this persecution of the Jews in Russia? *So far as physical intervention is concerned, we are powerless. But we have the right to protest against it, and by that protest help to create a moral sentiment in the world which even Russia cannot ignore. We have the right to have our protest sent to the authorities at Washington, and we have the right to request such authorities, in the manner which international usage permits, to have our protest called to the attention of the Russian government.*"

PRESIDENT EDWIN A. ALDERMAN, of Tulane University said at a New Orleans meeting over which the Mayor of the city presided on June 13th, 1903: (pp. 106, 107-8).

"Thomas Jefferson declared that 'he had sworn eternal hatred against every form of tyranny against the mind and soul of man,' and he nobly lived up to that oath. That impulse is woven into my soul, too, and I am here to-night to protest against the exercise of these passions, and I would protest, whether they occurred in Russia or in France, or America, or whether in my own home, or whether ten thousand leagues across the sea, or whether they were directed against the brown man, the yellow man, the black man, Jew or Gentile . . . We are Hebraic in our consciences, in the ethical content of our minds, in our notion of heaven and hell, and right and wrong, and, so far as I am concerned, whenever the Jew is oppressed, I feel that oppression as if it were the oppression of a brother; and whenever that great historic race is belittled or disadvantaged, I would resent it as I would resent an injury to a brother.



*"This democracy of ours, so strong and triumphant, must protest, therefore, against such deeds as the deed of Kishineff and the cause for it. It is the protest of the modern against the medieval, of the democratic against the autocratic, of light against darkness, of opportunity against privilege; and democracy has no choice but to take its stand and to speak its word. Hence, I am here as a democrat and a man and an American to protest against the medievalism, to welcome these people to our shores, if need be to ask that we look into our own life for any creeping manifestations of any such injustices."*

The protest meetings culminated in the preparation of the famous *Kishineff Massacre Petition*, signed by an enormous number of the leading residents of the United States, in the course of which it was said: (pp. 479, 480).

*"The cruel outrages perpetrated at Kishineff during Easter of 1903, have excited horror and reprobation throughout the world. Until your Majesty gave special and personal directions, the local authorities failed to maintain order or suppress the rioting. The victims were Jews and the assault was the result of race and religious prejudice . . . A public sentiment of hostility has been engendered against them and hangs over them as a continuing menace . . . Religious persecution is more sinful and more fatuous than war. War is sometimes necessary, honorable and just; religious persecution is never defensible . . . With such an example before it, the civilized world cherishes the hope that upon the same initiative there shall be fixed in the early days of the twentieth century, the enduring principle of religious liberty; that by a gracious and convincing expression your Majesty will proclaim, not only for the government of your own subjects, but also for the guidance of all civilized men, that none shall suffer in person, property, liberty, honor or life, because of his religious belief; that the humblest subject or citizen may worship according to the dictates of his own conscience, and that government, whatever its form or agencies, must safeguard these rights and immunities by the exercise of all its power."*

*"Far removed from your Majesty's dominions, living under different conditions, and owing allegiance to another Government, your petitioners yet venture, in the name of civilization, to plead for religious liberty and tolerance, to plead that he who led his own people and all others to the shrine of peace, will add new luster to his reign and fame by leading a new movement that shall commit the whole world in opposition to religious persecution."*

This was delivered to SECRETARY OF STATE HAY on June 15th, 1903, whereupon he said: (pp. 471-2).

*"No person of ordinary humanity can have heard without deep emotion the story of the cruel outrages inflicted upon the Jews of Kishineff. These lamentable events have caused the profoundest impression throughout the world, but most especially in this country, where there are so many of your co-religionists who form such a desirable element of our population in industry, thrift, public spirit and commercial morality. Nobody can ever make the Americans think ill of the Jews as a class or as a race . . . we know them too well. In the pain-*

*ful crisis through which we are now passing the Jews of the United States have given evidence of the highest qualities—generosity, love of justice, and power of self-restraint.*

*"The Government of the United States must exhibit the same qualities. I know you do not doubt the sentiments of the President. No one hates more energetically than he does such acts of cruelty and injustice as those we deplore. But he must carefully consider all the circumstances and then decide whether any official action can be taken in addition to the impressive and most effective expression of public opinion in this country during the last month."*

Secretary Hay accompanied the committee which presented the petition to the White House, where PRESIDENT THEODORE ROOSEVELT said: (pp. 472-473, 475-476).

*"Mr. Chairman: I need not dwell upon the fact so patent as the widespread indignation with which the American people heard of the dreadful outrages upon the Jews in Kishineff. I have never in my experience in this country known of a more immediate or a deeper expression of sympathy for the victims and of horror over the appalling calamity that has occurred."*

*"It is natural that while the whole civilized world should express such a feeling, it should yet be most intense and most widespread in the United States; for of all the great Powers I think I may say that the United States is that country in which from the beginning of its national career most has been done in the way of acknowledging the debt due to the Jewish race and of endeavoring to do justice to those American citizens who are of Jewish ancestry and faith . . . Exactly as I should claim the same sympathy from any one of you for any tragedy that happened to any Christian people, so I should hold myself unworthy of my present position if I failed to feel just as deep sympathy and just as deep sorrow and just as deep horror over an outrage like this, done to the Jewish people in any part of the earth. I am confident that much good has already been done by the manifestations throughout the country, without any regard to creed whatsoever, of horror and sympathy over what has occurred . . . I will consider most carefully the suggestions that you have submitted to me, and whether the now existing conditions are such that any further official expression would be of advantage to the unfortunate survivors, with whom we sympathize so deeply. Nothing that has occurred recently has had my more constant thought, and nothing will have my more constant thought than this subject."*

*"In any proper way by which beneficial action may be taken, it will be taken, to show the sincerity of the historic American position of treating each man on his merits without the least reference to his creed, his race or his birthplace."*

As known, the President directed the U. S. Ambassador at St. Petersburg to communicate the contents of the petition to the Russian Minister of Foreign Affairs, in a public and published cablegram, asking whether



it would be received for submission to the Emperor himself. While the Russian Government declined to receive the petition, its contents thus became known all over the world, and were brought home to the Emperor himself.

AS TO OFFICIAL GOVERNMENTAL REPRESENTATIONS, they are often loosely spoken of as "Intervention", which includes all forms of representation and action by external Powers, according to varying connotations of the term, ranging from mere "intercession" to forcible "interference". If one examines the leading works on Intervention, such as H. G. Hodges' *"The Doctrine of Intervention"* (1915); E. C. Stowell's *"Intervention in International Law"* (1921), Lingelbach's *"Doctrine and Practice of Intervention in Europe"* (1900), Charles E. Martin's *"Policy of the United States as Regards Intervention"*, Pitman B. Potter's *"Intervention en Droit International Moderne"* (in "Academie de Droit International Recueil des Cours," 1930 II, Vol. 32, pp. 611-690) and Oscar S. Straus' *"Humanitarian Diplomacy of the United States"* in his "The American Spirit" (reprinted from the "American Society of International Law Proceedings" for 1912, p. 45, et seq.), we find in each, clear recognition of the right—even before the Minorities Treaties of 1919—at least to make "intercessions" on behalf of the victims of religious persecution of another State. Precedents as to intermediation for Jews have been particularly frequent and common, because they have no country of their own, other than the one involved in persecuting such religious minority.

Recurring to the brutal edict of Empress Maria Theresa of 1744, for the expulsion of all her Jewish subjects from Bohemia and Moravia, I myself had occasion to point out in my "Jewish Rights at the Congresses of Vienna and Aix-la-Chapelle" (p. 46)—written for use at the Peace Conference of 1919—that "arguments for such intermediation (were) not only the behests of humanity and justice, but that Burmania mentions the important Dutch commercial interests that would be jeopardized, and the injury occasioned through the resulting forced immigration into Holland, thus antedating the Hay Roumanian note by nearly two centuries. The works I cited there, an article in *"Monatsschrift für Geschichte und Wissenschaft des Judentums"*. Vol. 44, pp. 177 et seq. and 259 et seq. by Krengel, and David Kaufmann; *"Gesammelte Schriften"* II 328-373, have since been augmented by "Die Juden in Prag" in *"Festschrift der Loge Praga des Ordens Bnai Brith"* (Prague 1927), Bergel's article in *"Jahrbuch der Gesellschaft für Geschichte der Juden in der Czechoslovak Republik"* I (1929) and Dr. S. H. Lieben's article in Idem. Vol. 4, and a Dutch work of 1924 by Prinz.

The actual forcible intervention of England and France in Syria in 1860 to stop Mt. Lebanon massacres of Christians deserves fuller consideration. It followed disturbances by Maronites and Druses, and is described at length in Alfred Lyall's "Life of Marquis of Dufferin" I. 99-124. It was also considered at length in Iskandar's "The Lebanon in Turmoil", edited by J. F. Scheltema for Yale University, and reviewed in the "American Historical Review" Vol. 26, p. 326 (Jan. 1921) by F. S. Bliss. The subject was discussed at length in Parliament by leading

statesmen, including Lord Stratford de Radcliffe, Lord John Russell, Lord Wodehouse, Lord Brougham, Bernal Osborn, Sir James Ferguson and others.\*

## II. American Governmental Intercession on Behalf of the Jews

In an article by me which was published in the "New York Times" on March 24th, 1933, as to the practice of our Government in aid of victims of religious and racial persecution, including both our own citizens and residents of foreign countries in the general interest of humanity, I collected many precedents, herein enlarged, which evidence, I think, an important historic policy on the part of our Government.

1. As to the right of American citizens, whether native or naturalized, and their wives and minor children, to our Government's protection in Germany, there is, of course, no occasion for any discussion. Title 8, Sec. 13 of the U. S. Code, re-enacting Rev. St. Sec. 2000, which was itself declaratory of subsisting law, in terms formulates this governmental obligation as to citizens, and Prof. Borchard's important work on "Diplomatic Protection of Citizens Abroad" emphasizes the same. The leading case of *Yick Wo vs. Hopkins*, 118 U. S. 356, as to the right of citizens of foreign countries here to the enjoyment of substantially all the civil rights enjoyed by our own citizens under our Constitution also measures the reciprocal rights we have a right to expect from other countries in treating our own citizens abroad. In the leading case of *Truax vs. Raich*, 239 U. S. 33, these principles were applied to overthrow legislation limiting ordinary employment to U. S. citizens. Under our citizenship laws, pursuant to which the wives and certain minor children of citizens may not at once acquire abroad the American citizenship of the husband and father, the same right of protection arises in favor of such wives and children, inchoate citizens. The rules of international law recognize that aliens residing in foreign lands, though not full citizens, ought as to civil rights enjoy similar protection, in view of the unity of the family tie. In our long controversy with Russia as to anti-Jewish discriminations, we continuously emphasized the fact that religious differences may not detract from the rights of Jewish citizens holding American passports under our constitution and fundamental principles. ("Termination of the Treaty of 1832 between the United States and Russia—Hearing before the Committee on Foreign Affairs of the House of Representatives, Dec. 11th, 1911," Revised Edition, pp. 105 et seq.). As stated by Secretary Evarts under date of September 4th, 1880 (p. 111), copied from our "Foreign Relations" 1880 (p. 880):

"It should be made clear to the Government of Russia that in view of this Government, the religion professed by one of its citizens has no relation whatever to that citizen's right to the protection of the United States, and that in the eye of this Government an injury officially dealt to Mr. Pinkos at St. Petersburg on the sole ground that he

\* (See Great Britain, Parliamentary Debates, Series III Vol. 159 pp. 1647-55, 2220; Vol. 160 pp. 603-627, 689-690, 346-7; 632-8, 641-653, 696-7; 1130-1; 1478-86; 1815. Vol. 161 pp. 192-8, 868-876; 878-9, 1092-1123; 1229-1231; 1525-6; 1540-1, 2154. Vol. 162 pp. 202-3, 500-515; 1183; 1870; 1894. Vol. 163 pp. 233-242; 473 and 938).



is a Jew presents the same aspect that an injury officially done to a citizen of Russia in New York for the reason that he attends any particular church there would be in the view of his Majesty's Government."

Said Acting Secretary John Hay, under date of October 22nd, 1880, in instructions to our Minister to Russia (*Id.*, p. 115; from "Foreign Relations" for 1881, p. 993) :

"It is hoped that you will press your representations to the successful establishment of the principle of religious toleration for our citizens peacefully residing or travelling abroad, which we as a Nation have such a deep interest in maintaining."

Again, under date of March 3rd, 1881, Secretary Evarts wrote (*Idem.*, p. 124; Foreign Relations, 1881, p. 1007) :

"This Government does not know or inquire into the religion of the American citizen it protects. It can not take cognizance of the methods by which the Russian authorities may arrive at the conclusion or conjecture that any given American citizen professes the Jewish faith. The discussion of the recent cases has not as yet developed any judicial procedure whereby an American citizen, otherwise unoffending against the laws, is to be convicted of Judaism, if that be an offense under Russian law; and we are indisposed to regard it as a maintainable point that a religious belief is, or can be, a military offense, to be dealt with under the arbitrary methods incident to the existence of a 'state of siege.'"

Said Secretary Blaine on July 29th, 1881 (*Idem.*, p. 129; Foreign Relations, 1881, p. 1030) :

"I need hardly enlarge on the point that the Government of the United States concludes its treaties with foreign states for the equal protection of all classes of American citizens. It can make absolutely no discrimination between them, whatever be their origin or creed. So that they abide by the laws at home or abroad it must give them due protection and expect like protection for them. Any unfriendly or discriminatory act against them on the part of a foreign power with which we are at peace would call for our earnest remonstrance, whether a treaty existed or not."

On July 1st, 1904, Secretary Hay wrote (*Idem.*, p. 220, Foreign Relations, 1904, p. 790) :

"You will make known to his Excellency (Count Lamsdorff) the views of this Government as to the expediency of putting an end to such discriminations between different classes of American citizens on account of their religious faith when seeking to avail themselves of the common privilege of civilized peoples to visit other friendly countries for business or travel. That such discriminatory treatment is naturally a matter of much concern to this Government is a proposition which his Excellency will readily comprehend without dissent. In no other country in the world is a class discrimination applied to our visiting citizens."

The continued representations our Government made in 1895 to Turkey, protesting against Turkish prohibition of emigration of Armenian relatives of American citizens of Armenian extraction, not themselves citizens, should also be noted (U. S. Foreign Relations, 1895 II, 1471-3; 1896, p. 924; this citation is augmented hereinbefore pp. 11-13).

Again, under date of Aug. 22nd, 1895, acting Secretary Adde wrote (*Idem.*, p. 186; Foreign Relations 1895, p. 1067) :

"Viewed in the light of an invidious discrimination tending to discredit and humiliate American Jews in the eyes of their fellow citizens, it is plain that the action of Russian consular officers does produce its effect within American territory, and not exclusively in Russian jurisdiction."

When Russia claimed that the discrimination was a racial and not a religious one, our government replied that "the two questions are inseparable" (*Idem.*, p. 180; Foreign Relations, 1895, p. 1058). Similarly in *Yick Wo vs. Hopkins*, *supra*, a racial discrimination effected by unlawful administration of law, was held violative of the due process of law accorded by the 14th Amendment.

In connection with the *Keiley* case, in which a purely political right was involved, our Government emphatically expressed its disapproval of Austria's course in declining to receive Mr. Keiley as U. S. Minister because his wife was a Jewess. President Cleveland, in his annual message to Congress on Dec. 8th, 1885, said that Austria's course

"could not be acquiesced in without violation of my oath of office and the precepts of the Constitution, since they necessarily involved a limitation in favor of a foreign government, upon the right of selection by the Executive, and required such an application of a religious test as a qualification for office under the United States as would have resulted in the practical disfranchisement of a large class of our citizens and the abandonment of a vital principle of our Government" (Richardson's "Messages of the Presidents," Vol. VIII, pp. 325-6).

In connection with this *Keiley* case, Secretary Bayard wrote on May 18th, 1885 (Foreign Relations for 1885, pp. 48-51, summarized in Moore's International Law Digest IV, pp. 480-3) :

"It is not within the power of the President, nor of the Congress, nor of any judicial tribunal in the United States to take or even hear testimony, or in any mode to inquire into or decide upon the religious belief of any official, and the proposition to allow this to be done by any foreign Government is necessarily and *a fortiori* inadmissible. To suffer an infraction of this essential principle would lead to a disfranchisement of our citizens because of their religious belief, and thus impair or destroy the most important end which our constitution of Government was intended to secure.

Religious liberty is the chief cornerstone of the American system of government, and provisions for its security are imbedded in the written charter and interwoven in the moral fabric of its laws. Anything that tends to invade a right so essential and sacred must be carefully guarded against, and I am satisfied that my countrymen, ever mindful



of the sufferings and sacrifices necessary to obtain it, will never consent to its impairment for any reason or under any pretext whatsoever . . .

It is not believed by the President that a doctrine and practice so destructive of religious liberty and freedom of conscience, so devoid of catholicity, and so opposed to the spirit of the age in which we live, can for a moment be accepted by the great family of civilized nations or be allowed to control their diplomatic intercourse. Certain it is, it will never, in my belief, be accepted by the people of the United States, nor by any administration which represents their sentiments."

See also Moore's International Law Digest IV, p. 1, *et seq.*, 97, *et seq.*

In connection with Russian discriminations, Secretary Evarts on June 28th, 1880 ("Termination of the Treaty of 1832," etc., p. 109; Foreign Relations, 1880, p. 875), wrote:

"It is confidently submitted to His Majesty's Government whether in the event Mr. Pinkos should be finally expelled from Russia or be otherwise interrupted in his peaceful occupation, on the sole ground that his religious views are of one kind, rather than another, he would not be justly entitled to make reclamation for the damage and loss to which he might be subjected."

Again, on Sept. 4th, 1880 (*Idem.*, p. 111; Foreign Relations for 1880, p. 880), Secretary Evarts wrote:

"It is evident that the losses incurred by the abandonment of his business in St. Petersburg will afford Mr. Pinkos ground for reclamation, if no other cause can be shown for the official breaking up of his business than the religious views he entertained. The direct application to have Mr. Pinkos indemnified, however, may be deferred until he shall make it appear what those losses were."

The *Pinkos case* is considered at some length in Moore's International Law Digest IV, pp. 114-116, as also unlawful racial discriminations (IV, p. 109), and religious discriminations (IV, p. 111, *et seq.*). See also VI, p. 247, *et seq.*; p. 333, *et seq.*

In this connection it is interesting to note the arbitral decision in the case of Mme. Chevreu, lately published in the "American Journal of International Law," Jan. 1933 (p. 153, *et seq.*), by which heavy damages were awarded against England for arrest and expulsion of the French subject involved from British territory without adequate investigation in wartime. Of course liability arises for failure to accord adequate protection from violence, as well as for governmental direct acts, especially where there is popular approval of such violence or of other unlawful discriminations (Moore's International Law Digest VI, pp. 809-883; Borchard, *supra*, p. 220, *et seq.*).

II. But international law and especially American precedents have advanced far beyond mere intervention on behalf of our own citizens, where religious rights are involved, and this has become our historic American policy. As far back as 1870, Charles Sumner, then Chairman of the Senate Committee on Foreign Relations, when offering a resolution of inquiry into Rumanian anti-Jewish atrocities, said he did so "in the

interest of humanity and in that guardianship of humanity which belongs to the Great Republic" ("Congressional Globe," 41st Congress, Second Session, Part 5, pp. 4044-5).

In the able address above cited by Oscar S. Straus, on "Humanitarian Diplomacy of the United States," in his "The American Spirit" (pp. 19-38), a number of notable instances of intermediation by our Government on behalf of non-American religious and political victims of persecution are collated and analyzed. He wisely calls these "intercessions," instead of "interventions." Among other instances he enumerated were our intercession on behalf of Greek independence; on behalf of Kossuth and other victims of the abortive revolutions of 1848 (herein before considered); on behalf of Cuba; on behalf of Christians (particularly missionaries and Armenians) in the Orient (hereinbefore considered), and on behalf of Jews in Russia and Rumania; especially since the Hague Conventions. It is significant that so many instances of such intercession by our Government on behalf of persecuted Jews who were not our citizens have taken place, beginning in 1840, and it is obvious that these have been largely actuated by the circumstance that our country was the pioneer in establishing complete religious liberty, and because Jews constitute purely a religious sect, having no other country of their own to appeal to, when persecuted by their own country of nationality. Passages from H. C. Hodges' work on "The Doctrine of Intervention" (1915) were quoted in Kohler and Wolf's "Jewish Disabilities in the Balkan States, American Contributions toward their Removal, with Particular Reference to the Congress of Berlin," pp. 94-7.

The leading instances in which our Government thus interceded for persecuted Jews were: (1) On behalf of Jewish victims of the Damascus blood accusations of 1840; (2) our efforts, particularly Minister Fay's, on behalf of Jewish emancipation in Switzerland; (3) our course in behalf of the Rumanian Jews, particularly in connection with Benjamin F. Peixotto's appointment as U. S. Consul to Rumania in the early '70's; (4) our course in connection with Jewish persecutions in the Balkans at the Congress of Berlin, in 1878, and thereafter; (5) President Cleveland's and Secretary Bayard's course towards Austria in connection with the Keiley case in 1885; (6) Secretary Hay's famous Rumanian note of 1902; (7) President Roosevelt's course towards Russia in connection with the Kishineff massacre petition; (8) the movement which led to the abrogation in 1911 of our treaty with Russia of 1832, because of anti-Jewish discriminations; and (9) President Wilson's and Col. House's course at the Peace Conference of 1919 in connection with minority protection treaties and cessation of Polish anti-Jewish actions.

Some of these precedents deserve consideration at somewhat greater length. First in order was our course in connection with the Damascus Blood Accusations of 1840, namely, prosecutions based on the atrocious fabrication that Jews use non-Jewish blood for ritual purposes. This incident is considered in Moore's International Law Digest VI, 347, but more fully in Dr. Cyrus Adler's book "Jews in the Diplomatic Correspondence of the United States" (pp. 4-6), being No. 15 of the Publications of the American Jewish Historical Society (1906). (Also Publications Ameri-



can Jewish Historical Society, No. 8, pp. 141-5). The latter works may in this instance be supplemented by a significant letter which I myself was privileged to publish more than thirty years ago from a transcript made for me by the State Department, reading as follows, being a letter dated August 17th, 1840, sent by Secretary of State John Forsyth under President Van Buren to David Porter, our Minister to Turkey (Publications No. 9, pp. 153-4):

"Sir:—In common with the people of the United States, the President has learned with profound feeling of surprise and pain, the atrocious cruelties which have been practised upon the Jews of Damascus and Rhodes, in consequence of charges extravagant and strikingly similar to those, which in less enlightened ages, were made pretexts for the persecution and spoilation of these unfortunate people. As the scenes of these barbarities are in the Mahomedan dominions, and, as such inhuman practices are not of an infrequent occurrence in the East, the President has directed me to instruct you to do everything in your power with the government of his Imperial Highness, the Sultan, to whom you are accredited, consistent with discretion and your diplomatic character, to prevent or mitigate these horrors—the bare recital of which has caused a shudder throughout the civilized world; and in an especial manner, to direct your philanthropic efforts against the employment of torture in order to compel the confession of imputed guilt. The President is of the opinion that from no one can such generous endeavors proceed with so much propriety and effect, as from the representative of a friendly power, whose institutions, political and civil, place upon the same footing, the worshippers of God, of every faith and form, acknowledging no distinction between the Mahomedan, the Jew, and the Christian. Should you, in carrying out these instructions, find it necessary or proper to address yourself to any of the Turkish authorities, you will refer to this distinctive characteristic of our government, as investing with a peculiar propriety and right, the interposition of your good offices in behalf of an oppressed and persecuted race, among whose kindred are found some of the most worthy and patriotic of our citizens. In communicating to you the wishes of the President, I do not think it advisable to give you more explicit and minute instructions, but earnestly commend to your zeal and discretion a subject which appeals so strongly to the universal sentiments of justice and humanity.

I am, sir, your obedient servant,

JOHN FORSYTH."

(2) The invaluable and long-continued efforts of our Government to effectuate Jewish emancipation in Switzerland were described at length by Mr. Sol. M. Stroock in Publications of the American Jewish Historical Society, No. 11, pp. 7-52, and Dr. Cyrus Adler's above-cited work contains some additional transcripts of official documents (pp. 25-39). Several of the Swiss Cantons maintained laws forbidding Jews to settle there, and they were absolutely repealed only through an amendment of the Swiss Constitution, according full religious liberty, finally adopted in 1874.

Secretary of State Lewis Cass, under date of November 5th, 1857, wrote to our Minister in Switzerland, Theodore S. Fay:

"I am directed by him (President Buchanan) to instruct you to use all the means in your power to effect the removal of the odious restrictions complained of, which, it is understood, are contained in the laws of but four of the Swiss cantons."

Minister Fay replied under date of January 19th, 1858: "I shall endeavor to present the question in so clear a light as to demonstrate that a more liberal course is required by the dignity and even by the material interest of Switzerland herself. I hope also to procure a larger interpretation of the law in favor of our fellow-citizen, that some practical benefit may immediately result." Accordingly, on May 26th, 1859, Mr. Fay presented his classical detailed "Israelite Note" to the Swiss Government, and it was so convincing that it was promptly printed in German and French by his authority, and was a potent factor in inducing the cantonal laws to be changed. Secretary (then Senator) Cass had previously condemned this discrimination in the Senate, under date of May 15th, 1854, saying:

"Jew and Gentile, all are equal in this land of law and liberty, and as the former suffers most illiberal persecution, his case is entitled to the most commiseration."

Again, he wrote as to our principle of religious liberty:

"I mean to say that it suits all nations and all times as the law of the right implanted by the Divine Law Giver in the human breast, and whoever fails, be the guilty party prince or people or priest, will in vain seek to avoid the just consequence of presumptuous intolerance."

(3) As to our course concerning Rumanian persecutions, Benjamin F. Peixotto, himself a Jew, was appointed U. S. Consul to that principality for the express purpose of promoting Jewish emancipation and the cessation of anti-Jewish activity, President Grant handing him a letter of credence dated December 8th, 1870, which concluded with the words: "The United States, knowing no distinction of her own citizens on account of religion or nationality, naturally believes in a civilization the world over which will secure the same universal views." I was privileged in connection with the late Simon Wolf to write a detailed account of our relations to Jewish emancipation there in above-cited volume entitled "Jewish Disabilities in the Balkan States, etc."—constituting No. 24 of the "Publications of the American Jewish Historical Society." It was in connection with those Balkan anti-Jewish activities that Charles Sumner uttered the words quoted hereinbefore.

(4) The book just cited contains details as to action by the Great Powers at the Congress of Berlin in 1878 in order to accord Jews full and equal rights in the Balkan States, including excerpts from the protocol of the Congress of Berlin. It was there that Prince Bismarck, president of the Congress, described these religious liberty clauses as provisions "which have in view an advance in civilization and against which doubtless no Cabinet will have objections in principle" (p. 57), and also stated (p. 64):



"The assent of Germany is always given for every motion favorable to religious liberty." In Dr. Cyrus Adler's above-cited work, attention was called to the fact that John A. Kasson, U. S. Minister to Austria, under date of June 5th, 1879, first suggested that Jewish disabilities be placed on the agenda of the Congress (pp. 48-50). In his dispatch to the State Department, Mr. Kasson wrote:

"It would be to the honor of the United States Government if it could initiate a plan by which at once the condition of American Hebrews resident or travelling in Roumania, and the conditions of natives of the same race, could be ameliorated and their equality before the law at least partially assured. The European congress is about to assemble, and will be asked to recognize the independence of Roumania. Would there be any just objection to the United States Government offering on its part, if the European powers would on their part, make the same condition, to recognize the independence of that country, and to enter into treaty stipulations with its government, only upon the fundamental preliminary agreements:

"1. That all citizens or subjects of any such foreign nationality shall, irrespective of race or religious belief, be entitled to equal rights and protection under the treaty and under their laws.

"2. That all subjects or citizens under the jurisdiction of the Roumanian Government shall, irrespective of their race or religious belief, have equal rights of trade and commerce with the citizens or subjects of the foreign governments making such treaty; equal rights in the purchase, consumption, barter, or sale of the products of such foreign country, and in sales of Roumanian products to such aliens; equal rights to make contracts with the citizens or subjects of such foreign government, and to be equally protected by the laws in the exercise of the rights so secured.

\* \* \* Your own judgment will improve, doubtless, the form of action above suggested; but it will be sufficient, I hope, to attract your attention to a question, the favorable solution of which would greatly gratify the American people, and evoke especial gratitude from that race which has found in the United States absolute legal equality and security, and the occasion of the congress is most favorable for giving it effect, if approved.

JOHN A. KASSON."

In above-cited work by Simon Wolf and myself (p. 42), a despatch from Bayard Taylor, then U. S. Minister at Berlin, was quoted concerning his own efforts on behalf of Jewish rights at that Congress, despite the fact that the United States did not participate officially; it is as follows:

"The chief interest which the Government and people of the United States have in the treaty is its enforcement of religious liberty in Roumania, Bulgaria and Eastern Roumelia. This is the only point which I felt at liberty to present unofficially to several members of the Congress, and I am glad to report that it was opposed by none of the statesmen present."

(5) President Cleveland's and Secretary Bayard's utterances as to the Keiley affair have already been adequately quoted herein (pp. 33-4).

(6) Secretary Hay's famous Roumanian Note of 1902 was also considered at some length in above-cited work, "Jewish Disabilities in the Balkan States" (pp. 81-82; 133 *et seq.*). The note was prepared at the special direction of President Theodore Roosevelt, and was expressly framed to embrace non-American victims of Roumanian persecution. In Dr. Cyrus Adler's above-cited work, p. 54, the Note is reprinted in full from our "Foreign Relations" for 1902, p. 910, *et seq.* The following passages from it are particularly germane:

"The political disabilities of the Jews in Roumania, their exclusion from the public service and the learned professions, the limitations of their civil rights, and the imposition upon them of exceptional taxes, involving as they do wrongs repugnant to the moral sense of liberal modern peoples, are not so directly in point for my present purpose as the public acts which attack the inherent right of man as a breadwinner in the ways of agriculture and trade. The Jews are prohibited from owning land, or even from cultivating it as common laborers. They are debarred from residing in the rural districts. Many branches of petty trade and manual production are closed to them in the overcrowded cities, where they are forced to dwell and engage, against fearful odds, in the desperate struggle for existence. . . Human beings so circumstanced have virtually no alternatives but submissive suffering or flight to some land less unfavorable to them. Removal under such conditions is not and cannot be the healthy, intelligent emigration of a free and self-reliant being. It must be, in most cases, the mere transplantation of an artificially produced diseased growth to a new place. . . . The teachings of history and the experience of our own nation show that the Jews possess in a high degree the mental and moral qualifications of conscientious citizenship. No class of emigrants is more welcome to our shores when coming equipped and inspired with the high purpose to give the best service of heart and brain to the land they adopt of their own free will. But when they come as outcasts, made doubly paupers by physical and moral oppression in their native land, and thrown upon the long suffering generosity of a more-favored community, their migration lacks the essential conditions which make alien immigration either acceptable or beneficial. So well is this appreciated on the Continent that, even in the countries where anti-semitism has no foothold, it is difficult for these fleeing Jews to obtain any lodgment. America is their only goal.

The United States offers asylum to the oppressed of all lands. But its sympathy with them in nowise impairs its liberty and right to weigh the acts of the oppressor in the light of their effects upon this country, and to judge accordingly. . . .

Whether consciously and of purpose or not, these helpless people, burdened and spurned by their native land, are forced by the sovereign power of Roumania upon the charity of the United States. This Government cannot be a tacit party to such an international wrong. It is constrained to protest against the treatment to which the Jews of Rou-



mania are subjected, not alone because it has unimpeachable ground to remonstrate against the resultant injury to itself, but in the name of humanity. The United States may not authoritatively appeal to the stipulations of the treaty of Berlin, to which it was not and cannot become a signatory, but *it does earnestly appeal to the principles consigned therein, because they are the principles of international law and eternal justice*, advocating the broad toleration which that solemn compact enjoins, and standing ready to lend its moral support to the fulfillment thereof by its co-signatories, for the act of Roumania itself has effectively joined the United States to them as an interested party in this regard."

At the Bucharest Peace Conference, at the close of the Balkan War, our Minister at Bucharest on August 5th, 1913, at the direction of Secretary Bryan, suggested inclusion of a religious and civil liberty provision in the Peace Treaty for the protection of Jewish inhabitants of territory about to be transferred from Bulgaria to Roumanian sovereignty, with the result that appropriate declarations were made by the Roumanian plenipotentiary (Kohler & Wolf's "Jewish Disabilities in the Balkan States," pp. 91-4).

The United States, at Secretary Root's instance, also participated in the Algeiras Conference of 1906, chiefly for the protection of the Jews in Morocco (Kohler's "Jewish Rights at International Congresses," in American Jewish Year Book of 1917-18, p. 155, quoting the official protocol for April 2nd, 1906, of that Conference appearing in "Nouveau Recueil General de Traites, II Series, Vol. 34, Part 1, pp. 229-230).

(7) President Theodore Roosevelt's course in connection with the Kishineff Massacre Petition in 1903, was outlined herein, and is described at length in Oscar S. Straus' "Under Four Administrations," pp. 171-3. In order to ensure knowledge by the Czar himself of the feelings of America at large about these anti-Jewish atrocities, the entire contents of the petition were embodied in a despatch, inquiring whether the Czar would receive the petition.

(8) The controversy with Russia, resulting in the abrogation of our Treaty of 1832 because of discriminations against Jewish holders of American passports, called forth the despatches, excerpts from which appeared in Section 1 hereof, besides many others. Most of these were collated in the 261 page volume published by our Government above cited, entitled "Termination of the Treaty of 1832 between the United States and Russia—Hearing before the Committee on Foreign Affairs of the House of Representatives, Monday, Dec. 11th, 1911," which also includes statements before the Committee and the proceedings of an important mass-meeting at Carnegie Hall, Dec. 6th, 1911. A related volume was published by the Government, which contains the Senate Hearing of the same month. Dr. Cyrus Adler's above-cited work conveniently reprints many of our state papers on the subject (pp. 73-115). In the supplementary American chapters of a work entitled "God in Freedom," by Luigi Luzzatti, late prime minister of Italy, the history of the abrogation movement was outlined by me, and a famous address in aid of it by Louis Marshall also appeared (pp. 705-734). It is not well known, however,

that Secretary Blaine sought to initiate an avowed joint diplomatic movement with England against Russia's course, not confined to discriminations against American and English citizens respectively. This despatch does not appear in our published "Foreign Relations," probably because the efforts to induce England to join us were still pending when the volume of our "Foreign Relations" in question was published. I quote from a photostatic transcript in my possession of Secretary Blaine's instructions to James Russell Lowell, then U. S. Minister at London, dated Nov. 22nd, 1881, the following excerpts:

"I am well aware that the domestic enactments of a state toward its own subjects is not generally regarded as a fit matter for the intervention of another independent power. But when such enactments directly affect the liberty and property of foreigners who resort to a country under the supposed guarantee of treaties framed for the most liberal ends, when the conscience of an alien owing no allegiance whatever to the local sovereignty, is brought under the harsh yoke of bigotry or prejudice which bows the necks of the natives, and when enlightened appeals made to humanity, to the principles of just reciprocity and to the advancing spirit of the age, in behalf of tolerance, are met with intimations of a purpose to still further burden the unhappy sufferers and so to necessarily increase the disability of foreigners of like creed resorting to Russia, it becomes in a high sense a moral duty to our citizens and to the doctrines of religious freedom we so strongly uphold, to seek proper protection for those citizens and tolerance for their creed, in foreign lands, even at the risk of criticism of the municipal laws of other states.

"It cannot but be inexpressibly painful to the enlightened Statesmen of Great Britain, as well as of America, to see a discarded prejudice of the dark ages gravely revived at this day,—to witness an attempt to base the policy of a great and sovereign state on the mistaken theory that thrift is a crime of which the unthrifty are the innocent victims, and that discontent and disaffection are to be diminished by increasing the causes from which they arise. No student of history need be reminded of the lessons taught by the persecutions of the Jews in Central Europe, and on the Spanish Peninsula. Then, as now in Russia, the Hebrew fared better in business than his neighbor; then, as now, his economy and patient industry bred capital, and capital bred envy, and envy persecution, and persecution disaffection and social separation. The old tradition moves in its unvarying circle,—the Jews are made a people apart from other peoples, not of their volition, but because they have been repressed and ostracised by the communities in which they mixed. The *ghetto* of mediaeval times still preaches its eloquent lesson, which the nations have done well to heed. In Great Britain and in the U. S., the Israelite is not segregated from his fellow men, a social Esau, alike repellent and repelled. His equal part in our social framework is unchallenged; his thrift and industry add to the wealth of the state; and his loyalty and patriotism are unquestionable. So, likewise, in the great states of Europe, until we reach the Russian frontier, the Carpathian chain on the strait of Gibraltar. The Empire of the Czar, in



its treatment of native Hebrews, ranks strangely, with the Roumania of the past before the enlightened counsels of the Treaty of Berlin prevailed, and with the Morocco of the present!

"It was perfectly clear to the mind of the late President that an amelioration of the treatment of American Israelites in Russia could only result from a very decided betterment of the condition of the native Hebrews—that any steps taken toward the relief of one would necessarily react in favor of the other—and that, under the peculiar and abnormal aspects of the case, it is competent and proper to urge upon Russia action in consonance with the spirit of the age. To his successor in the Chief Magistracy, these conclusions are no less evident. And I am charged by the President to bring the subject to the formal attention of Her Britannic Majesty's Government, in the firm belief that the community of interests between the U. S. and England in this great question of civil rights and equal tolerance of creed for their respective citizens in foreign parts, will lead to consideration of the matter with a view to common action thereon. Should the views of the two Governments be found to agree herein, it would seem, moreover, a propitious time to initiate a movement which might also embrace other Powers whose service in the work of progress is commensurate with our own, to the end that Russia may be beneficially influenced by their cumulative representations and that their several citizens and subjects visiting the territory of the Empire on law-observing missions of private interest, shall no longer find their subjection of conscience to military forms and procedure which obtains nowhere else in Europe.

"You may read this despatch to Lord Granville and, if he desires it, leave with him a copy. You will say to him at the same time that, while abating no part of his intention to press upon the Russian Government the just claim of American citizens to less harsh treatment in the Empire by reason of their faith, the President will await with pleasure an opportunity for a free interchange of views upon the subject with the Government of Her Majesty."

When Mr. Lowell presented this despatch to Lord Granville, the latter stated that "Her Majesty's Government would always be most happy to act in concert with that of the United States on any question regarding religious liberty," but ultimately, apparently for political reasons, England did not co-operate with us in the plan.

(9) The course of President Wilson and Colonel House at the Peace Conference of 1919, in promoting the adoption of minority protective treaty clauses, including protection to religious minorities, is of course well known. It was my privilege to publish a detailed history of this movement in another one of the Supplementary Chapters of Luzzatti's "God in Freedom," pp. 735-794 and reprint as part thereof, an address on some phases of the subject by the late Louis Marshall, who played so important a role in their adoption. Related to the same is President Wilson's appointment of the so-called Morgenthau Mission, to investigate Polish atrocities against the Jews (*Idem.*, p. 792). Reference is made to these chapters as also to the authoritative exposition of the Polish Minorities Treaty by the Allies, signed on their behalf by M. Clemenceau (*Idem.*,

pp. 745-750). These show how largely protection of Jewish minorities from violence and from civil, political and religious discrimination was aimed at by these treaties. Although the treaties themselves were imposed only on newly erected states, like Poland, it should be remembered that the declaration that infractions of the rights of racial, religious or linguistic minorities "constitute obligations of international concern,"—found in the Polish Treaty,—is the statement of a general principle of international law. (See Polish Treaty, American Journal of International Law, October 1919 Supplement, pp. 423-433). As heretofore shown (p. 40) Secretary Hay so treated the similar clauses of the Treaty of Berlin.

III. The United States, however, is not limited to general consideration of humanity and mere "intercession" in connection with Germany's treatment of her racial, religious or linguistic minorities, for *Germany made express pledges to the United States and the other Allies at the Peace Conference, guaranteeing protection of her own religious and racial minorities equal to that established for Poland's minorities by express treaty.* These pledges prohibit not merely physical violence to her Jewish inhabitants, but accord to them equality of civil and political rights of all kind. Each of the many anti-Semitic "planks" of the "National Socialist Party Platform" directly contravenes these pledges.\* At the Peace Conference, Germany herself was aware, before the treaty was completed, that she would lose territory inhabited by Germans to Poland and other states by enforced cession. Accordingly, her delegates on May 29th, 1919, delivered a written pledge to the Allies, binding herself to accord equal protection, but asked for treaty minority protective clauses in the Polish and other treaties establishing new states. Her written pledge is as follows: (Kraus & Rödiger's "Urkunden zum Friedensvertrag von Versailles von 28 Juni 1919," Vol. I, p. 456, translated in "International Conciliation" October, 1919, No. 143, p. 30, entitled "Comments by the German Delegation on the Conditions of Peace"):

"Germany advocates in principle the protection of national minorities. The protection may be settled to the best purpose within the scope of the League of Nations. Germany, on her part, however, must demand such assurances as are already fixed by the peace treaty, for those German minorities which, by cession, will pass over into alien sovereignty. Such minorities must be afforded the possibility of cultivating their German characteristics, especially through permission to maintain and attend German schools and churches, and to publish German papers. A still more extensive cultural autonomy based on national registration (Koloster) would be desirable. *Germany on her part is resolved to treat minorities of alien origin in her territories according to the same principles.*" (See also Miller's "The Drafting of the Covenant," II, 759).

\* (See the platform reprinted in Alfred Rosenberg: "Wesen, Grundsätze und Ziele der N. S. D. A." (1930); also Mildred S. Wertheimer's "The Hitler Movement in Germany" (Foreign Policy Information Service, and her "The Jews in the Third Reich," Oct. 11, 1933). See now also "The Jews in Nazi Germany," published by the "American Jewish Committee," (1933, pp. 39-41) and James Waterman Wise's "Swastika—The Nazi Terror" (N. Y., 1933, pp. 39-42), quoting "Hitlerism, the Iron Fist in Germany" by Nordicus.



A few days before this was written, the draft of the minority protective clauses of the Polish treaty had been submitted by the Committee on New States of the Peace Conference to Poland, and Germany knew their tenor, so that this was said with express reference to such clauses, which Germany asked to have imposed on Poland and other new states. Accordingly, the Allies accepted Germany's offer, and on the one hand over-ruled the protests of the new states at being thus discriminated against, and on the other abandoned any intention to bind Germany by such express treaty limitations, accepting her pledge instead. This was in terms stated to Germany by the Allies under date of June 16th, 1919, officially, to the effect that they

"are prepared to accord guarantees under the protection of the League of Nations for the educational, religious and cultural rights of German minorities transferred from the German Empire to the new States created by treaty. *They take note of the statement of the German delegates that Germany is determined to treat foreign minorities within her territory according to the same principles.*" (Miller's "Drafting of the Covenant," I, 548; "International Conciliation," November, 1919, No. 144, p. 21, quoted by me in Luzzatti's "God in Freedom," p. 773).\*

Germany's guarantees were accepted all the more freely because she herself had imposed minority protective clauses on Roumania by the Peace of Bucharest of May 7th, 1918, covering equality of religious, civil, and political rights, including the Jews specifically (*Idem.*, pp. 773-4).

Accordingly, Germany stands pledged to the United States and the other Allies to carry out all the provisions for the protection of her religious, racial and linguistic minorities that are contained in the Polish minority treaty. These include

- 1) "full and complete protection of life and liberty to all inhabitants \* \* \* without distinction of birth, nationality, language, race or religion," and "free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals" (Article 2).
- 2) Recognition as nationals, *ipso facto* and without the requirement of any formality of German, Austrian, Hungarian or Russian nationals habitually resident at the date of the coming into force of the present treaty (Article 3).
- 3) Admission and declaration to be nationals *ipso facto* and without the requirement of any formality of persons born in said territory of parents habitually resident there (Article 4).
- 4) Undertaking that no hindrance shall be placed in the way of the exercise of the right to choose nationality (Article 5).

\* See emphasis on these pledges in the "Protest" signed by 51 distinguished members of the New York bar, reprinted in "The Jews in Nazi Germany," pp. 93-4. The signers included two former U. S. Secretaries of State, Elihu Root and Bainbridge Colby, acting Secretary of State Polk, two former U. S. Ambassadors, John W. Davis and James W. Gerard, and such distinguished leaders of the American bar as Charles C. Burlingham, Samuel Seabury, George W. Wickersham, Henry W. Taft, Charles H. Strong, Victor J. Dowling, Morgan J. O'Brien, James A. O'Gorman, C. E. Hughes, Jr., Joseph H. Choate, Jr., Ogden L. Mills, Raymond B. Fosdick, Paul D. Cravath, Charles S. Whitman, Nathan L. Miller and George Gordon Battle.

- 5) All persons born in said territory not nationals of another state shall *ipso facto* become (German) nationals (Article 6).
- 6) All nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion. Difference of religion, creed or confession shall not prejudice any national in matters relating to the enjoyment of civil or religious rights, as, for instance, admission to public employments, functions and honors or the exercise of professions and industries. No restrictions shall be imposed on the free use by any national of any language in private intercourse, in religion, in the press or in publications of any kind or at public meetings (Article 7).
- 7) Nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment of security in law and in fact as the other nationals (Article 8).

It will be remembered that Germany successfully invoked the jurisdiction of the World Court to enforce these very articles as against Poland (Advisory Opinion No. 7 of Sept. 15th, 1923). When these treaty clauses were being drafted, strong efforts were made to authorize the minorities involved themselves to bring complaints against their infracting State before the League of Nations and the World Court, but President Wilson (who more than any one else was responsible for their adoption), rejected these suggestions, stating that it would be dangerous and ill-advised to permit such a course, and he let enforcement rest instead on the complaints of other nations. He said at a conference with Louis Marshall and Dr. Cyrus Adler in Paris on May 26th, 1919 (to quote from a contemporary record of the interview, appearing in the Luzzatti book; pp. 784-5):

"The President spoke at some length on this subject, explaining that he thought it was not in the interest of the minorities themselves that they should make the appeal, and indeed they could not unless they were recognized as an independent corporate or legal entity, which he considered inadvisable. *As for the Jews, it seemed to him that the Jews of America and England would keep a close watch over the affairs of their brethren in Eastern Europe, and if there were any infractions of the treaty, they would have the right to bring them to the attention of their government and through their governments to the League of Nations.*"

While Germany possibly succeeded in eliminating League of Nations jurisdiction by giving the voluntary pledges instead,\* the obligation created by these pledges remains, and is enforceable by our own Government. It is obvious that President Wilson relied chiefly upon representation from our own Government (and England) to enforce Jewish minority rights. I understand it to be a fact that some of the Jews of Germany do not regard themselves as a "minority group," not even a religious minority, in view of the equality of rights provisions of the German Con-

\* But see to the contrary Hon. Norman Bentwich's pamphlet *The League of Nations and Racial Persecution in Germany* (London, 1933) and Rev. Sidney E. Goldstein's "The League of Nations and The Grounds for Action in Behalf of the Jews of Germany" (N. Y., 1933); also Report of 6th Committee of League of Nations Assembly, Oct. 10, 1933.



stitutions of 1871 and 1919, but the present German Government treats them as such, and as devoid of fundamental rights, and the treaties expressly impose obligations quite independent of any law, constitution or regulation of an infracting State. Under these treaties the Jews clearly constitute a "religious minority" in a country inhabited by a majority of Christians, and it was so held by the committee of legal experts whom the Council of the League of Nations called in for advice in the Bernheim case, presently to be considered. (See *infra*, pp. 63-4).

We Jews constitute a "religious minority" even in the United States, where constitutions accord us "equal rights." As applied to citizens, such racial or religious discriminations are unthinkable for the American people. As concerns resident aliens, too, as seen, we accord them substantially all the civil and religious rights of citizens, though we have curtailed admission of aliens in order to preserve American standards of living. As said by President Theodore Roosevelt in a famous passage in his Presidential message of 1906 with respect to the Japanese School Question of California: "Not only must we treat all nations fairly, but we must treat with justice and good-will all immigrants who come here under the law. Whether they are Catholics or Protestants, Jew or Gentile, whether they come from England or Germany, Russia, Japan or Italy, matters nothing. All we have a right to question is the man's conduct."

That these "pledges" are legally, and not merely morally, binding, follows from a very recent analogous opinion of the World Court in the "*Eastern Greenland Case*," involving conflicting claims by Denmark and Norway, handed down April 5th, 1933, which was considered by Prof. James W. Garner in an editorial in the July 1933 issue of the "*American Journal of International Law*" (pp. 493-7) entitled "The International Binding Force of Unilateral Oral Declarations." Other similar precedents were also collated there by Prof. Garner. That case involved a promissory oral declaration by the Norwegian Minister of Foreign Affairs, made July 22nd, 1919, to the Danish Minister of Foreign Affairs to the effect that "plans of the Danish Government over Eastern Greenland would meet with no opposition on the part of Norway." The declaration was at once reduced to writing and initialled by the Norwegian Minister, but not ratified by their Parliament, nor registered with the Secretariat of the League. Norway conceded before the World Court the fact of the making of the declaration, but contended that it was merely a diplomatic assurance of Norway's benevolent attitude, and not a binding promise having the force of a treaty obligation; also that her Minister of Foreign Affairs was not competent to bind his state by such declaration, that international law attributes legal force only to those acts of a foreign minister which fall within his constitutional authority. The Court, however, sustained the obligatory character of this assurance, saying in the majority opinion:

"The Court considers it beyond all dispute that a reply of this nature given by the Minister of Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs."

Judge Anzilotti's dissenting opinion turned on other grounds, and also admitted that the declaration, although a verbal one, was a valid agreement, and as such binding upon Norway, particularly since both parties were agreed as to its existence and tenor, and therefore no question of proof was involved. He thought that the question whether Norwegian constitutional law authorized the Foreign Minister to make the declaration was one which did not concern Denmark. It was M. Ihlen's duty to refrain from giving his reply until he had obtained any consent that might be required under the Norwegian laws. If he violated those laws, that involved a question of national responsibility which was of no concern to Denmark, and had no effect upon the binding force of the Norwegian declaration.

Prof. Alexander N. Sack has kindly called my attention to the following additional authorities as to the binding character of such pledges:

"*Hall's International Law*, 8th Edition, ed. by A. P. Higgins (1924) 383: 'Usage has not prescribed any necessary form of international contract. A valid agreement is therefore concluded as soon as one party has signified his intention to do or to refrain from a given act, conditionally upon the acceptance of his declaration of intention by the other party as constituting an engagement, and so soon as such acceptance is clearly indicated. Between the binding form of contracts which barely fulfill these requirements, and of those which are couched in solemn form, there is no difference. From the moment that consent on both sides is clearly established, by whatever means it may be shown, a treaty exists of which the obligatory force is complete.'

Hall, *ibidem*, at 385: "Tacit ratification takes place . . . when persons . . . enter into obligations in notes or in any other way for which express ratification is not required by custom, without their action being repudiated so soon as it becomes known to the authority in fact capable of definitely binding the state." See also "*Bluntschli, Droit International* No. 417."

By the Treaty between the United States and Germany, signed August 25th, 1921 (*Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and Other Powers 1910-1923; Vol. III, p. 2596, et seq.*), the United States reserved the right to enforce these pledges and similar rights. It was there recited and provided:

"Considering that the United States, acting in conjunction with its co-belligerents, entered into an Armistice . . . in order that a Treaty of Peace might be concluded;

"Considering that the Treaty of Versailles . . . came into force . . . but had not been ratified by the United States;

"Considering that the Congress of the United States passed a Joint Resolution, approved by the President July 2nd, 1921, which reads in part as follows:

"Resolved . . . that the state of war . . . is hereby declared at an end . . . ("Sec. 2.") That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights . . . to which it or they have become entitled



under the terms of the armistice . . . or which, under the Treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the Principal Allied and Associated Powers, . . . or otherwise . . .”

“Art. I: Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights . . . specified in the aforesaid Joint Resolution . . .”

In Article II of this Treaty, subd. 2, it was provided that the United States “shall not be bound by the provisions of Part I of that Treaty . . . which relate to the Covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, *unless the United States shall expressly give its assent to such action.*” By Subd. 4 “the United States is privileged to participate in the Reparation Commission, . . . and in any other Commission established under the Treaty or under any agreement supplemental thereto, . . . (but) is not bound to participate in any such commission unless it shall elect to do so.”

Our treaty of friendship, commerce and consular rights with Germany of Dec. 8th, 1923, proclaimed Oct. 14th, 1925 (42 U. S. Statutes at Large 2132) also contains comprehensive religious liberty provisions.

STRESEMANN, in his famous speech before the German Reichstag of February 9th, 1926, said:

“We can champion the cause of German minorities abroad with full conviction and good conscience only, if we accord to minorities in our German Fatherland the same rights which we demand for Germans abroad.” (*Erler: “Das Recht der Minderheiten”* 1931, p. 197).

In the official communication to the League entitled “Observations of the German Government regarding the Guarantees Assumed by the League of Nations in respect of the Provisions for the Protection of Minorities,” dated April 12th, 1929 (*“League of Nations—Protection of Linguistic, Racial or Religious Minorities by the League of Nations—Resolutions and Extracts,”* etc., Second Edition, March, 1931, p. 199), it was said:

“The preservation of the racial characteristics of minorities, as well as their cultural, linguistic and religious liberties, must be assured to them. *Responsibility for this guarantee is incumbent, in the first place, upon the countries to which the minorities belong. They must recognize the safeguarding of these minority rights as a fundamental law, the effects of which cannot be restricted by any other laws, regulations or official measures of any kind whatever. This fundamental law has, moreover, been given an international character. Its observation has been placed under the guarantee of the highest international organization, the League of Nations. It is general and unrestricted. It implies, in the first place, constant supervision over the treatment of the minorities in the various signatory States, and, further, intervention in cases of concrete infraction of the provisions regarding the protection of minorities. The whole system thus defined constitutes an important and permanent corollary to the fact that, by the 1919 Treaties of Peace,*

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**Officers**

ALFRED M. COHEN, *President*  
Cincinnati

LUCIUS L. SOLOMONS, *1st Vice-Pres.*  
San Francisco

February 28, 1934.



numerous populations were detached from their national communities and placed under the sovereignty of another State."

The distinguished German publicist, Carl Georg Bruns, published an interesting German paper on "Minority Rights as International Legal Rights" in "*Zeitschrift für Völkerrecht*," Vol. XIV, Supplement II (1928), which is reprinted in his posthumous volume "*Gesammelte Schriften zur Minderheitenfrage*" (1933, pp. 22-76), which also contains other relevant matter; including a discussion of "*Stresemann's Minderheiten Politik*" (pp. 294-9) reprinted from "*Nation und Staat*," III, No. 1, pp. 2-6 (Oct. 1929):\* In the discussion of the Bernheim petition before the League of Nations Council, as we will see hereafter, M. Paul-Boncour, the French delegate, and others, regarded Germany's pledges as legally binding with respect to the Jews. (See *infra*, pp. 57-8).

The Assembly of the League of Nations, in September, 1922, adopted a resolution, reading (Luzzatti's "God in Freedom," p. 770):

"The Assembly expresses the hope that the States which are not bound by any legal obligation to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious, or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council."

### III. The Bernheim Upper Silesian Petition Before the Council of the League of Nations

How greatly the Minorities Treaties of 1919 have made the protection of the rights of racial, religious or linguistic minorities a matter of international concern, and no longer a merely internal affair of the persecuting state, was clearly shown by the proceedings of the League of Nations Council in connection with the petition of Franz Bernheim, asking relief against Germany for violation of the minorities provisions of the Upper Silesian Treaty of May 15th, 1922, between Germany and Poland. Any doubt as to the efficacy of those treaties, where they apply, and where a gross violation was involved, such as the Hitler crusade against the Jews of Germany, which political considerations could not ignore, was then manifested by the action of the Great Powers. Of course, the United States did not join, not being a member of the League. Not merely *protests* from foreign governments, but international *action* to protect the Jews of Upper Silesia as a religious minority, whose fundamental treaty rights Germany had violated, in defiance of treaty, took place in that instance.

\* See also DR. JOSEPH ROUCEK'S "*The Minority Principle as a Problem of Political Science*" and his article "*The Problems of Minorities and the League of Nations*," published in "*Journal of Comparative Legislation and International Law*," Third Series, Vol. XV Part I, Feb. 1933, pp. 67-76. Article XI, paragraph two of the Covenant of the League of Nations provides: "It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." See also Sir John Simon's address of April 13, 1933, in British "Parliamentary Debates", 5th Series, Vol. 276, p. 2807 *et seq.*



The incident was so important, and so relevant to the present discussion, that I transcribe the official documents in full. \* Instead of reproducing Franz Bernheim's petition in my text, I am printing it as an Appendix hereto, and summarizing and analyzing it as part of the paper proper. The Appendix reproduces the document, as translated in full in the issue of the "New York Times" of May 27th, 1933. It was filed May 17th, 1933, by Dr. Emil Margulies of Prague, president of the Jewish party of Czechoslovakia, Mr. Leo Motzkin of Paris of the Comité des Delegations Juives" and Dr. N. Feinberg of Geneva, author of a work entitled "La Question des Minorités a la Conference de la Paix de 1919-1920 et L'Action Juive en Faveur de la Protection Internationale des Minorités." (1929). Another petition was filed simultaneously on behalf of the "Comité des Delegations Juives" and the "American Jewish Congress" and other Jewish organizations, signed by L. Motzkin and Dr. Emil Margulies, also relating to the Jews in Upper Silesia, under the same treaty, but it need not be further considered herein, as it was not entitled to the summary hearing which was invoked in the Bernheim petition, and accorded to the latter by the Secretary General of the League, Sir Eric Drummond, under the regulations applicable to the latter alone. Petitioner Franz Bernheim was a German Jewish refugee from Upper Silesia, born in Austria, who fled to Prague, Czechoslovakia, after having resided in Gleiwitz, German Upper Silesia, and been employed there from September 30th, 1931, to April 30th, 1933 and been discharged, together with all other Jewish employees, under the anti-Jewish conditions created by the Hitler regime.

As stated, the Bernheim petition invoked the German-Polish Treaty concerning Upper Silesia of May 15th, 1922, also known as the Geneva Convention, which is to be found conveniently reprinted in League of Nations Publications I. B. Minorities 1927 I. B. 2, entitled "Protection of Linguistic, Racial and Religious Minorities by the League of Nations—Provisions Contained in the Various International Instruments at Present in Force" (1927) at pp. 64-87. Unfortunately, these provisions apply only to residents of Upper Silesia. The minority protective clauses of the treaty run from articles 65 to 158 of the Treaty, Part III (pages 64 to 87), and first in terms adopt verbatim the Polish minority protective treaty in Division I (Articles 65 to 72), and then carry them out even more specifically and in greater detail in the subsequent articles. The Polish treaty clauses were expounded at length by the late Louis Marshall in an address published in *Judaean Addresses*, Vol. III, pp. 169-182 (reprinted by me in the Luzzatti work), and he was their principal draftsman, in conjunction with Judge J. W. Mack, David Hunter Miller, Manley O. Hudson and Lucien Wolf. They are so carefully phrased that they successfully ran the gauntlet of the Polish attack before the World Court in the decision against Poland rendered by that Court, known as Advisory Opinion No. 7 on September 15th, 1923. They specifically forbid every possible form of discrimination on the score of race or religion as to public office, professions, trade, industry and schooling, and guarantee the minorities uniform treatment with the majority.

\* I am expanding this section of my paper, by including action that took place shortly after it was submitted, though I outlined the importance of the case at the time.

In this Silesian Treaty, it is also expressly recited that its terms "constitute obligations of international concern" and "shall be placed under the League of Nations," and that they shall be "recognized as fundamental laws" and "prevail over every German or Polish law, regulation or official action." A unique provision of the Silesian treaty is contained in Article 74, which provides that "the question whether a person does or does not belong to a racial, linguistic or religious minority may not be verified or disputed by the authorities." Article 80 guarantees identical treatment with that accorded to other nationals "as regards the exercise of agricultural, commercial or industrial callings or any other calling." In Chapter III, embracing Articles 84 to 96 entitled "Religion," equal treatment "of all organized religions" is guaranteed, and specific reference to "Jewish communities" occurs in Article 86, and many other articles, showing unmistakably the intention to guarantee equal rights to Jews throughout as among the "minorities" protected.

Article 89 expressly adopts in terms, Article XI of the Polish Minority Treaty as to Saturday Sabbath for Jews, and Article 91 accords them equitable shares of public budgets for their separate schools, should they choose to establish them, instead of availing themselves of absolute right to attend German national schools and colleges.

Throughout, the right runs in favor of Silesian German "nationals," regardless of their location, and Germany could not be heard to say, therefore, that, after making it unsafe for Bernheim to remain in Germany, even before he jeopardized his life still more by filing this complaint, he has no longer any status in Czecho-Slovakia, to file this complaint. This point is very similar to the precedent I secured from the U. S. Supreme Court in *Tod vs. Waldman*, 266 U. S. 113, where the victim of the Ukrainian pogrom involved was held entitled under analogous language to invoke the "religious refugee" exception of our Immigration Literary Test though she had sojourned for 17 months thereafter in other countries before being enabled to get passage to the United States.

Some confusion has arisen in several quarters as to whether German Jews under the discarded German Constitution were even a "religious" minority, because that instrument (before it was set aside by Hitler), gave equal rights to German Jewish citizens. The very theory of these minorities' treaties, however, is that "no law, regulation or official action" of any infracting state can deprive any one belonging to a religious minority, as defined in the treaty, of his rights under those treaties, which must prevail over any national law, constitution or otherwise. Practically every step in Northern Silesia in the Hitler anti-Jewish crusade is a gross violation of this treaty.

It is understood that Benes, distinguished Czecho-Slovakian statesman, espoused the cause of Mr. Bernheim. His chief, Masaryk, lived in our country for years, and is thoroughly imbued with our American principle of religious liberty. Moreover, thousands of Jewish refugees have already fled to Czecho-Slovakia from Germany, and serious problems will arise as to their maintenance there, if the Hitler programme is continued in force in Germany, and still further swells their number, an argument Secretary Hay employed in his famous Rumanian Note.



To recur, however, to the proceedings before the League of Nations Council, the official minutes as far as relevant, speak for themselves, and before quoting them in full, it is merely necessary to point out that shortly prior to May 26th, Mr. Lester, delegate of the Irish Free State, had been selected by the Council to report to it on the Bernheim petition.

## LEAGUE OF NATIONS

### Seventy-third Session of the Council

#### MINUTES

#### Fourth Meeting (Private, Then Public)

Held on Friday, May 26th, 1933, at 10:30 A. M.

President: M. CASTILLO NAJERA.

The Members of the Council were represented as follows:

United Kingdom of Great Britain & Northern Ireland: Mr. Eden. China: M. Wellington Koo. Czechoslovakia: M. Benes; later M. Osusky. France: M. Paul-Boncour. Germany: M. von Keller. Guatemala: M. Matos. Irish Free State: Mr. Lester. Italy: M. Biancheri. Mexico: M. Castillo Najera. Norway: M. Mowinckel. Panama: M. Amador. Poland: Count Raczynski. Spain: M. de Zulueta.

3281. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia: Petition of M. Bernheim, dated May 12th, 1933, concerning the Situation of the Jewish Minority in German Upper Silesia: Inclusion of this Item in the Agenda of the Session.

M. von Keller said that, in view of the short period available, he had been unable to conclude the necessary enquiries to establish whether the petitioner was or was not competent to submit a petition under Article 147 of the Geneva Convention. In order that the examination of this petition should not be delayed, however, M. von Keller felt he should withdraw his opposition to the insertion of that question on the agenda on the understanding that when the matter was being considered an enquiry would be made into M. Bernheim's qualifications to submit the petition.

The President decided, as a result of the German representative's statement, to place the question on the agenda of the public meeting.

#### Fifth Meeting (Private, Then Public)

Held on Saturday, May 27th, 1933, at 10:30 A. M.

The Members of the Council were represented as above, with the following exceptions: Czechoslovakia: M. Osusky in place of M. Benes. Norway: M. Lange in place of M. Mowinckel.

Secretary-General: SIR ERIC DRUMMOND.

3290. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia: Petition of M.

Bernheim, dated May 12th, 1933, concerning the Situation of the Jewish Minority in German Upper Silesia.

Mr. Lester regretted that he would not, as he had hoped, be able to present a report on the petition of M. Bernheim that morning, but sincerely hoped to be in a position to do so on Monday morning.

The President said that, in view of the Rapporteur's observations, the discussion of this question would be adjourned until Monday.

(The Council went into public session).

3291. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia: Petition of M. Bernheim, dated May 12th, 1933, concerning the Situation of the Jewish Minority in German Upper Silesia.

The President said that, at the private meeting which had just taken place, the Rapporteur had informed the Council that his report was not yet ready owing to the great difficulties raised by the question. The discussion was therefore adjourned till the following Monday.

#### Sixth Meeting (Public)

Held on Tuesday, May 30th, 1933, at 10 A. M.

President: M. BIANCHERI.

The Members of the Council were represented as at the Fifth Meeting, with the following exceptions:

Mexico: M. Castillo Najera was absent.

Secretary-General: SIR ERIC DRUMMOND.

3294. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia: Petition of M. Bernheim, dated May 12th, 1933, concerning the Situation of the Jewish Minority in German Upper Silesia.

MR. LESTER presented the following report: I \*

"I. The petition we have to consider submits to the Council the question whether the application of a number of laws and administrative orders in the territory of Upper Silesia is compatible with the provisions of the third part of the Geneva Convention relating to Upper Silesia. The laws and orders in question, to which the petition contains specific references, concern, in particular, the status of civil servants, the position of lawyers, notaries and doctors, and the schools and universities. It is a fair generalization that these laws and orders involve restrictions in various forms which would apply to persons belonging to the Jewish population. One of the laws, that dealing with schools and universities, contains a clause to the effect that 'obligations incurred by Germany under international treaties are not affected by the provisions of the present law.' The petition refers, without mentioning any actual cases, to the boycott of Jewish shops, lawyers, doctors, etc.,

\* I Document C. 351. 1933. I.



and the failure of the authorities and officials to protect the Jewish population, who, it is alleged, have thus been officially outlawed.

"I should like to recall the fact that, when this question was placed on our agenda, the German Government made reservations as to the petitioner's right to submit this petition to the Council under Article 147 of the Geneva Convention.

"II. The mere perusal of the laws and administrative orders mentioned in the petition, the texts of which are appended to it, shows that, in so far as some, at any rate, of their stipulations may have been applied in the territory of Upper Silesia, this application cannot have taken place without conflicting with a number of clauses of the third part of the Geneva Convention.

"III. It should be remarked, however, that, in the statement made by the German representative to the Council on May 26th, 1933, it is most plainly and categorically affirmed that internal legislation can in no case affect the fulfilment of international obligations, which I think may be taken to mean that the German Government is resolved to see that the provisions of the third part of the Geneva Convention are observed in Upper Silesia. Indeed, the German representative added that, if any infringements of the Convention had taken place, they were to be regarded as errors due to misconstructions of the internal laws by subordinate authorities. This statement implies, on the one hand, that the German Government will take steps to ensure that the general laws and administrative orders shall not be applied in Upper Silesia so far as they are incompatible with the provisions of the third part of the Convention, and, on the other, that persons who, because they belong to the minority, have lost their employment or found themselves unable to practise their trade or profession in consequence of the application of these laws will be reinstated in their normal position without delay. The Council would, I am sure, be glad if the German Government, in accordance with the principle which has been followed in the past, and to the maintenance of which the Council attaches great importance, whereby the Council or the Rapporteur has been kept informed of developments, would keep me informed in my capacity of Rapporteur of the decisions and measures it may think fit to take in this connection. I propose that the Council take note of these declarations by the German Government in the conviction that the latter has done and will do everything necessary to ensure that the provisions of the Geneva Convention regarding the protection of minorities shall be fully respected.

"IV. It only remains for me to deal with the point concerning the damage that may have been sustained in consequence of the application of these laws and orders in Upper Silesia by persons belonging to the Jewish minority and, in particular, by the petitioner himself. In this connection, I would remind the Council that these cases may be investigated under the local procedure. I would therefore suggest that the Council request the German Government to arrange for the petitioner's case to be submitted to that procedure forthwith."

M. VON KELLER regretted he was compelled to state, on behalf of his Government, that it was not in a position to accept the Rapporteur's report.

Referring generally to the reservation he had made at the last private meeting with regard to the petitioner's qualifications to bring the matter before the Council, M. von Keller desired to add the following. The Bernheim petition itself showed that the petitioner was not connected with Upper Silesia by any ties either of origin or family. Only from a comparatively recent date had he been employed in a business house in Upper Silesia. Even admitting that, owing to alleged personal injustice suffered by him in Upper Silesia, the petitioner was entitled to claim for himself the rights conferred by Article 147 of the Geneva Convention, he had no right whatever to submit a petition on general questions and on the application of the German laws in Upper Silesia, seeing that these laws did not in any way affect him. He had no claim whatever, either from the point of view of birth or of his condition of life, to be regarded as the qualified representative of the general interests of the Upper Silesian population. He was neither an official, nor a lawyer, nor a doctor, nor the father of children attending schools. Moreover, apart from the absence of any right on the part of the petitioner, a petition of that kind was not admissible because no definitive *de facto* situation had yet arisen in Upper Silesia as to the application of these laws.

Although the matter could not regularly be brought before the Council, and the German Government was consequently not bound to express an opinion on the substance of the question, it had, on its own initiative for political reasons with a view to preventing any misunderstanding, made the declaration of which the Council was aware—namely, that the internal German legislation could not in any way affect international conventions concluded by the Reich, and that, if any infringements of the Geneva Convention had taken place in German Upper Silesia, they must be regarded as errors due to misconstructions of the internal laws by subordinate authorities. The report presented to the Council did not take account of this situation of law and of fact, since it raised the question of the application of the laws in question in Upper Silesia and deduced therefrom certain conclusions and material demands.

Obviously, the German Government maintained its declaration, but it considered that the Council should have been content to take note of that declaration and to state that, in so far as its general aspects were concerned, the petition was disposed of. With regard to the personal aspect of the Bernheim petition, it had not been sufficiently clearly ascertained whether or not the petitioner belonged to a minority. The German Government had already opened the necessary enquiry and would, if necessary, be prepared to settle the affair by the local procedure, in accordance with the provisions of the Convention.

The *President* noted that the German representative's declaration appeared to contain two reservations. One was a special reservation: Was M. Bernheim entitled to submit a petition? The other was of a



wider character: Was M. Bernheim entitled to raise a general question? The President asked whether the Rapporteur had any proposals to make in this connection.

MR. LESTER said that the representative of Germany had, in his declaration, raised two previous questions concerning the interpretation of Article 147 of the Geneva Convention relating to Upper Silesia. For the moment, therefore, he would leave aside all the other points which the German representative had raised, though he must not, of course, be held to agree with them in any way. The first of the previous questions raised was whether the petitioner could be considered, under the terms of Article 147, as a person "belonging to a minority"; the second was whether, in the affirmative, he had the right, according to that same article, to submit to the Council the petition now before it. Mr. Lester would be grateful, therefore, if the Council would authorize him to obtain the opinion of a Committee of Jurists on these two points, in order to enable him either to maintain his report as it stood or to propose to the Council any necessary changes. With regard to the composition of the Committee of Jurists, he recalled to the Council that a few days previously it had adopted an opinion, which also concerned the interpretation of Article 147 of the Geneva Convention. That opinion was drawn up by a Committee of Jurists composed of M. Max Huber, M. Bourquin and M. Pedroso. It would seem desirable that, as the Committee had already been constituted and had studied the article in a special way, the Council should submit the request to these three eminent jurists and ask them to form the Committee, the appointment of which Mr. Lester had proposed. He trusted that the Committee would be able to report to the Council at a comparatively early date, but obviously it would require reasonable time to consider the matter. He therefore ventured to propose that the session should not be declared closed that morning, but that the Council should meet again, in not less than seven days and not more than fifteen, in order that the matter might be settled definitely.

MR. EDEN endorsed the course of action proposed by the Rapporteur, which, indeed, seemed the best course that could be taken in the present circumstances. He agreed that it was desirable to clear up the legal difficulties which persisted, and no doubt the sooner that could be achieved, the better it would be for all concerned. He had only one further observation to add—namely, that, if he did not seek to controvert some of the arguments brought forward by his German colleague, it must not be held that he endorsed them, for that was far from being the case.

M. PAUL-BONCOUR supported the *proposals of the Rapporteur*, who had shown an earnest desire to be quite objective and impartial throughout the matter. As a legal question of receivability had been raised, it was natural that it should be settled, or at least that the Council should settle it, only after taking the opinion of a Committee of Jurists. The composition and competence of the proposed Committee were plainly such as to give every guarantee to the Members of the Council. M. Paul-Boncour regretted, however, that the period sug-

gested was, in his opinion, somewhat too long. Public ill will, which the League of Nations had to face, like any other institution and even a little more than other institutions, was only too ready to accuse it of undue delay and procrastination. The Committee of Jurists, composed as it was of eminent persons who had already studied the interpretation of Article 147, would appear to M. Paul-Boncour to be in a position to give a very well-grounded opinion in a shorter time. He hoped the period required would be shorter because all the Members of the Council were in reality faced with a very grave problem. He had too great a respect for League procedure to desire this problem to be dealt with outside the special limited case of Upper Silesia at present under discussion. He would not be completely frank with himself, however, nor with the Council, if he did not say that, all the same, this particular case was only one aspect of a more general and more moving problem, and that the League of Nations, which had shown such legitimate anxiety for the rights of minorities belonging to nationalities living within other frontiers, could not really ignore the rights of a race scattered throughout all countries. He ventured to point out that, in making this observation, the representative of France remained faithful to a very ancient tradition of his country. It must never be forgotten that France had been the first, in her own internal arrangements, in the national sphere, to emancipate the Jews even before the Revolution and during the ministry of Turgot, and that it was she who had first placed the problem on an international plane. In 1878, at the Congress of Berlin, when new nations, new countries, were being brought into existence—Serbia, Roumania and Bulgaria—France, faithful to another of her traditions, supported the revival of these nations and stipulated, as a counterpart, that the Jews should be given equality of rights. The friendship which then and now bound her to these countries had never been weakened because of the condition on which she had then insisted. M. Paul-Boncour's statement was animated by the same spirit. It could not be less firm; he was convinced, moreover, that there was no disagreement on this point between him and the representative of Germany. In the discussions on the Peace Treaties, Germany had desired the minority treaties. She had at the same time insisted very strongly—and her attitude was deserving of appreciation—that she would herself, in her own territory, ensure respect for the rights of minorities. This she very properly desired to see embodied in the treaties in regard to other States. It seemed to M. Paul-Boncour that there could really be no difference of opinion on the substance of the matter among the Members of the Council, and it was for that reason that he earnestly hoped the League of Nations would be able to make its views known within a short time.

COUNT RACZYNSKI desired to make a short declaration on behalf of his Government, both as a Member of the Council and as a signatory, with Germany, of the Convention on Upper Silesia. In the first place, he asked the Council to authorize him, if necessary, to submit certain observations to the Committee of Jurists who would examine the matter. He also hoped, and here he supported the declarations of the repre-



sentatives of the United Kingdom and France, that the question would soon be cleared up, and that the Committee of Jurists would be able to submit a report within a short time.

Count Raczyński had then to point out that the German representative had to some extent abandoned the position which representatives of Germany had hitherto taken up. Indeed, they had endeavored to give as wide an interpretation as possible to the texts relating to the protection of minorities. There was now a difference. He knew very well that, from the point of view of formal law, the Council could deal only with the position of the Jewish minority in Upper Silesia. All the Members of the Council had, however, at least a moral right to make a pressing appeal to the German Government to ensure equal treatment for all the Jews in Germany. The representative of Poland thought this moral right followed from the declaration made by the German delegation at the Peace Conference on May 29th, 1919, of which the Allied and Associated Powers had taken note on June 16th, 1919, and which the representative of France had mentioned. Count Raczyński also desired to call attention to the resolution adopted by the Assembly of the League of Nations on September 22nd, 1922, when the Assembly expressed the hope "that the States which are not bound by any legal obligation to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council." He expressed the hope that the German Government would not refuse to take account of the recommendation contained in that resolution, for Germany, since her entry into the League of Nations, had always claimed proudly that she was the champion of racial, religious and linguistic minorities. He could not, moreover, forget the statements which the official representatives of the German Government had made at Geneva. In those statements—Count Raczyński was thinking of the statements of M. Curtius on September 22nd, 1930, and M. von Rosenberg on October 6th, 1932—the German Government had recognized the value of making the protection of minorities general, and had even declared its readiness to participate actively in doing so. The affair at present before the Council would doubtless cause the Members of the Council to reflect on the minority problem in general. The striking example of the Jewish minority in Germany, which had legal protection only in a small portion of German territory, must doubtless lead to the conclusion that the present system for the protection of minorities had all the defects of an inadequate system. It must appear to all States with minority undertakings, especially at a moment like the present, when the urgent need for the protection of minorities was felt elsewhere than in their own countries, as an unequal system, clearly contrary to the principle of the equality of States. To public opinion, the system must appear to be incomplete and to contain serious gaps, owing to the very fact that it included only certain arbitrarily selected States. There were minorities everywhere. Who, therefore, was to guarantee that, owing to the evolution of public affairs in a particular country having no minority

obligations, the minorities living there would never have cause to complain of unequal treatment. A minimum of rights must be guaranteed to every human being, whatever his race, religion or mother tongue. That minimum must be independent of the effects of changes in public life which it was impossible to foresee. The Polish representative therefore made an earnest appeal to all his colleagues on the Council to reflect on this serious question, the urgency and importance of which were brought out very clearly in the unfortunate affair before the Council. In Count Raczyński's opinion, the next Assembly should, during its debates, go fully into a problem, the discussion of which appeared necessary to the conscience of all nations and all statesmen.

M. DE ZULUETA said that he believed he could express an entirely objective opinion on the question. Spain had no national or political interest in the problem before the Council. What interested Spain in the present case, as in any similar case that might arise in any country whatsoever, was the affirmation of the principles and methods which the League represented. From that point of view, the representative of Spain thought it of the highest importance that the system for the protection of minorities should be applied integrally, and was convinced that it was of advantage to all that these stipulations should be scrupulously observed. Whenever a question of that kind was raised before the Council, whatever country it concerned and whatever might be the international position of the problem in each case, Spain would always be in favor of the strict fulfillment of conventions and complete adherence to the rules of the League of Nations. In that spirit, which so clearly animated Mr. Lester's document, M. de Zulueta declared, in the first place, that he accepted the report of the representative of the Irish Free State. He did not wish to enter into general considerations, and would confine himself to an example from his own country. Spain, with that wisdom which one learned in the hard school of experience, today viewed with deep sympathy and to some extent with maternal interest those thousands of families who, in centuries past, had been obliged to leave Spanish territory, and who, in several countries and territories of the Levant, still spoke the Spanish tongue and carried on the traditions and preserved the memory of the country of their forefathers. With regard to the previous question raised by the German representative, M. de Zulueta also approved the Rapporteur's suggestion that a Committee of Jurists should make a rapid study of the question.

M. LANGE said that he would have voted for the adoption of the report as presented that day by the Rapporteur. He would reserve his right, when it again came before the Council, to make certain observations on some of its points. The Council had now before it a previous legal question, and it was obvious that, in accordance with its practice, the Council would agree and would desire that this previous question should be elucidated. M. Lange supported the observations made in this connection by the representative of France, and expressed, as he had done, the desire that the period, which really seemed very long, should be shortened. A general debate, very wide in scope, had some-



what unexpectedly arisen out of the discussion, which should have been confined to procedure. M. Lange felt, therefore, that, as the representative of a country which, both in the Council and in the Assembly, had always shown a very keen interest in minority questions, he should say a few words. Norway was interested in questions relating to the protection of minorities, because their protection was one of the duties of the League, not only a duty imposed upon it by certain treaties, but also a moral duty; for the protection of minorities followed from certain principles of justice which were dear to Norway. In the present case, not only had certain sections of people who might be in a more or less inferior position to be protected. The development of these minorities, the assurance that they would receive equal treatment in the State and among the people with whom they found themselves, was a positive and fruitful element in the life of the nation itself. It would perhaps be said that Norway showed excessive idealism in this connection, but she felt very strongly that the diversity of development within a nation was a source of wealth which must not only be increased, if possible, but must be encouraged by all the means at the disposal of the League of Nations. M. Lange concluded by stating that no nation could argue that these were exclusively internal questions. At the present time, there were no purely internal questions. Any problem that arose in a country might have, and in most cases had, such effects outside the country as to make of it an international problem. It was one of the elementary duties of the League never to forget that aspect of the question.

M. MATOS said that he also would have voted for the report and fully concurred in the Rapporteur's proposals, with the same reservations—namely, that the proposal did not in any way imply that he accepted the point of view and arguments of the German representative.

M. OSUSKY said that, as the representative of a country in which the system of the protection of minorities was in force, he would have an opportunity to explain the views of his Government as to the principles and ideas raised by the case before the Council and the lessons that could be learned from it. M. Osusky concluded from the observations he had heard that morning that a civilized community of nations like the League could not disregard the claims of justice, not only international justice, but justice itself. Life continually taught that it was never either useless or premature to organize the defence of justice among men or among nations. As for the time being, the Council had to deal with a previous question raised by the German representative, M. Osusky would confine himself to expressing his entire approval of the observations of the United Kingdom representative. Like the representative of France, he believed it was highly desirable that the period within which the Council must be in a position to take a decision should be as short as possible.

MR. LESTER said it was quite clear that his colleagues would prefer that there should be no minimum time within which the Council should meet, as he had at first suggested. He willingly agreed and would propose that the delay should be shortened as far as possible. It was quite

clear that a little time might be necessary, especially as the Council would probably agree that any views which the two Government parties to the Convention might care to submit should be transmitted to the Committee of Jurists. Mr. Lester suggested that the Secretary-General should distribute the report of the Committee immediately it was received and that the Council should agree to meet within forty-eight hours of that date.

M. VON KELLER said that he had listened with the greatest attention to the statements of the various members of the Council. In the first place, he retained from those statements certain expressions and references which might be interpreted as indicating that the discussion could be extended to a wider field than that covered by the particular case before the Council. He did not desire to examine in detail the various remarks that had been made. But he ventured to state, in order to prevent any misunderstanding, that the discussion at the Council table must be limited to the situation existing in Upper Silesia and must in no way exceed the Council's competence. For the same reason, he did not desire to enter into the question whether the Jewish population in Germany had or had not the character of a minority. Speaking generally, he desired to point out that Germany had voluntarily extended very ample rights to the minorities living in her territory. The Council knew that the practical application of those rights had never given rise to justified complaints.

With regard to the obligations assumed by Germany under the Geneva Convention, the Council was aware of the declaration in which he had explained the German Government's attitude in the matter. That declaration was clear and definite, and he could not admit that there could be any doubt as to its meaning. M. von Keller unreservedly supported the general observations as to the importance of the protection of minorities. The Council knew that Germany had always, and would always, take great interest in the practical application of the protection of minorities as guaranteed by international conventions. M. von Keller was, however, compelled to emphasize that fact because, if a fair idea of the problem were to be obtained, it must be placed in the right perspective. He meant that account must be taken of the condition of life of the European minorities as a whole, as these had hitherto been dealt with by the League. Recently, the principles of morals and of civilization had been put forward in certain circles with an emphasis which had never been attached to them in other cases in which minority affairs had been discussed. M. von Keller drew attention to the large number of complaints presented to the League of Nations by the European minorities, in cases in which those minorities had not received justice in the conditions promised to them in accordance with specific conventions for the protection of minorities. If in those cases the desire for justice had been as frankly and eloquently expressed as at the present time, the League, as the guarantor of the minority treaties, would perhaps have been less criticised from the point of view of the execution and safeguarding of the protection of minorities. M. von Keller, however, did not desire to turn to the past. He would prefer to see in



the words of his colleagues an assurance for the future application and extension of the protection of minorities. He interpreted them as an expression of the desire of his colleagues also to contribute, in general, to the complete execution of the existing treaties for the protection of minorities. If that were so, the German representative thought his colleagues would have made a valuable contribution towards the cause of European solidarity. With regard to the proposal to consult a Committee of Jurists as to the petitioner's right to bring his petition before the Council, there was no reason for such a body to consider the matter, as it could be dealt with under the local procedure. As regards the general questions raised in the petition, M. von Keller did not think it necessary that the Council should make a further examination, in view of the German Government's declaration to which he had just referred. In the circumstances, he would abstain from voting on the Rapporteur's proposal.

M. LESTER presumed it was understood that the two questions set out in his earlier statement would be submitted to the Committee of Jurists. The German representative would understand that, as Rapporteur for minority questions on the Council, Mr. Lester could not accept any suggestion that the Council had not done its duty in the past, and was sure all the Members were in agreement with him that the Council would also in the future, in this case, as in all other cases, do its duty. His colleagues would all recall the words of a distinguished President of the Council that the protection of minorities was a sacred duty of the Council. As far as the Rapporteur and the Members of the Council were concerned, he believed that duty would be faithfully carried out.

The Rapporteur's Proposals were adopted.

3288. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia.

D. Petition of M. Franz Bernheim, dated May 12th, 1933, concerning the situation of the Jewish Minority in German Upper Silesia.

M. VON KELLER said that he had immediately communicated to his Government the Bernheim petition submitted a few days previously. The German Government had authorized him to make the following declaration: It is obvious that international Conventions concluded by Germany cannot be affected by internal German legislation. Should the provisions of the Geneva Convention have been violated in German Upper Silesia, this can only be due to mistakes on the part of subordinate organs acting under a mistaken interpretation of the laws.

MR. LESTER noted the German representative's statement, and said that, in accordance with precedent, he would like time to consider that statement. He was sure his colleagues were in the same position as himself. He hoped, however, to be able to present his report during the present session of the Council.

The Council decided to adjourn this question to a later meeting.

C. 366. 1933. 1

June 2nd, 1933

## PROTECTION OF MINORITIES

### Note by the Secretary-General

The Secretary-General has the honour to communicate to the Council the text of the legal opinion drawn up by a Committee of Jurists, composed of M. Max Huber (President), M. Bourquin and M. Pedrosa, in accordance with the resolution adopted by the Council on May 30th, 1933.

### OPINION OF THE COMMITTEE OF JURISTS

The question put by the Council of the League of Nations to the undersigned on May 30th, 1933, refers to the petition dated May 12th, 1933, addressed to the Council by M. Franz Bernheim on the basis of Article 147 of the Convention relating to Upper Silesia.

This question is whether, with a view to determining the Council's incompetence to take a decision on the said petition, it can be validly argued:

1. that the petitioner does not belong to the minority, because he has no sufficient connections with Upper Silesia;

2. (a) that the petitioner has not himself suffered from the laws and other enactments to which he calls attention as contrary to Articles 66, 67, 75, 80 and 83 of the Convention;

(b) that the enforcement of those laws has not yet given rise to a permanent *de facto* situation in Upper Silesia.

For the reasons hereinafter set out, the undersigned feel bound to reply in the negative to the questions put to them.

1.

It appears from the petition that the person above named is a German national of Jewish origin; that, at the time when the provisions referred to in the petition were enacted, he was at Gleiwitz, in Upper Silesia; that he was domiciled in that town and resided there from September 30th, 1931, to April 30th, 1933, as an employee in the local branch of the Deutsches Familien-Kaufhaus; and that he is now temporarily staying at Prague.

If these facts are correct—and they have not been disputed—the undersigned conclude that M. Franz Bernheim must be regarded legally as belonging to a minority within the meaning of Article 147 of the Convention.

The provisions referred to in the petition establish discriminations against the non-Aryan section of the population and, as far as Upper Silesia is concerned, therefore related to racial minorities within the meaning of the Convention. Monsieur Bernheim, being of non-Aryan origin, belongs to one of these minorities.

There is no provision in Part III of the Convention to justify the conclusion that a German petitioner must either have been domiciled in the



plebiscite area for a certain minimum period, or have connections with it of a specific nature, such as origin or family ties, or possess the nationality of the State of Prussia.

The fact that at the time of presenting the petition the petitioner was not in the plebiscite area does not deprive him of the right conferred upon him by Article 147, at all events in the circumstances of the case as revealed by the petition and referred to above.

2.

(a) Article 147 lays down that the Council is competent to pronounce on all individual or collective petitions relating to the provisions of Part III of the Convention and directly addressed to it by members of minorities.

The text is general: it covers all petitions, without any restrictions other than those that may be established by Part III of the Convention.

But we find nothing in Article 147 or in Part III to justify the removal of petitions from the Council's jurisdiction on the ground that the measures to which they relate have not affected the petitioners themselves. The only interest the petitioners are required to have is that resulting from their being actually members of a minority.

(b) Again, there is nothing in Article 147 or in the other provisions of Part III that makes it possible to contest validly the competence of the Council to deal with a petition complaining of laws and regulations, the enforcement of which has not yet given rise to a permanent *de facto* situation.

On the contrary, it results from Part III of the Convention (Article 67, paragraph 1; 68; and 75, paragraph 1) that the intention was that all nationals of the State should be equal before the law, and that that equality should exist both in law and in fact. Nor is any distinction permitted according to whether the *de facto* situation is permanent or not. Hence the right of petitioner may be exercised even though it be still possible to secure redress at the hands of the national authorities for the action complained of.

(signed) MAX HUBER

(signed) M. BOURQUIN

(signed) M. PEDROSO

**Seventh Meeting (Public)**

**Held on Tuesday, June 6th, 1933, at 10:30 A. M.**

President: M. CASTILLO NAJERA.

The Members of the Council were represented as follows: United Kingdom of Great Britain & Northern Ireland: Mr. Eden; China: M. Wunsz-King; Czecho-Slovakia: M. Osusky; France: M. Massigli; Germany: M. von Keller; Guatemala: M. Matos; Irish Free State: Mr. Lester; Italy: M. Biancheri; Mexico: M. Castillo Najera; Norway: M. Lange; Panama: M. Amador; Poland: Count Raczynski; Spain: M. de Madariaga.

Secretary-General: SIR ERIC DRUMMOND.

3297. Protection of Minorities: Application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia: Petition of M. Bernheim, dated May 12th, 1933, concerning the Situation of the Jewish Minority in German Upper Silesia (continuation).

MR. LESTER presumed that, as the report of the Committee of Jurists (1) had been circulated, the Council would merely take note of it and would then proceed to the consideration of his original report on the petition.

M. VON KELLER said that the views expressed in the Opinion which the Committee of Jurists had submitted to the Council differed fundamentally from the views M. von Keller had put forward during the discussions in the Council. Indeed, if the conclusions set out in the Opinion were accepted in their entirety, this could in a sense be regarded as dismissing the objections he had advanced against the adoption of the report at the preceding meeting. With all respect for the great ability of the three eminent jurists, the German representative must say quite frankly that their arguments had not convinced him. For he found himself in the difficulty that the arguments he had placed before the Committee did not, in his view seem to be dealt with in sufficient detail in the Opinion in question. For that reason, M. von Keller was unable to adopt a positive attitude. At the same time, although he was not convinced, he would pay a tribute to the work of the three eminent jurists, and would conform loyally to the excellent tradition that the opinion of the impartial experts to whom the Council thought fit to entrust the examination of disputed legal problems must be taken into account. For the above reasons, M. von Keller would refrain from voting on the report. He desired, however, to add two further remarks, one of which related to the question on the agenda, the other being more general and having regard to the future.

In the first place, he desired to repeat once again, with regard to the substance of the matter, that, from the beginning of the discussion on the petition, the German Government, without prejudice to any question of procedure, had adopted the standpoint that it was bound by international treaties and consequently by the Geneva Convention, and that any measures taken by subordinate authorities which might be incompatible with the Convention would be corrected. M. von Keller could only repeat—and he desired specially to emphasize this—that, in the German Government's opinion, this meant that the whole discussion served no purpose. At the same time, he was anxious that his preceding declaration, to which he had referred, should be explicitly confirmed. In the second place, he desired to point out that his colleagues on the Council would doubtless realize that, in adopting the Opinion of the Committee of Jurists, they would be accepting a principle of fundamental importance to the application of the protection of minorities in Upper Silesia. Obviously, that principle would have to be applied to all petitions, against whomsoever they might be brought. In conclusion,

(1) Document C. 366. 1933. I.



M. von Keller thanked the Rapporteur most sincerely for his untiring efforts to settle the matter.

MR. LESTER said that the statement just made by the representative of Germany, being somewhat more explicit on an important point, introduced a new factor. This new factor should, he thought, be taken account of in his report, and, as the representative of Germany had been good enough to inform him beforehand that he intended to make the statement, he had modified his report accordingly, and now presented it in the following form.\*

"I. The petition we have to consider submits to the Council the question whether the application of a number of laws and administrative orders in the territory of Upper Silesia is compatible with the provisions of the third part of the Geneva Convention relating to Upper Silesia. The laws and orders in question, to which the petition contains specific references, concern in particular, the status of civil servants, the position of lawyers, notaries and doctors, and the schools and universities. It is a fair generalization that those laws and orders involve restrictions in various forms which would apply only to persons belonging to the Jewish population. One of the laws, that dealing with schools and universities, contains a clause to the effect that 'obligations incurred by Germany under international treaties are not affected by the provisions of the present law.' The petition refers, without mentioning any actual cases, to the boycott of Jewish shops, lawyers, doctors, etc., and the failure of the authorities and officials to protect the Jewish population, who, it is alleged, have thus been officially outlawed.

"I should like to recall the fact that, when this question was placed on our agenda, the German Government made reservations as to the petitioner's right to submit this petition to the Council under Article 147 of the Geneva Convention.

"II. The mere perusal of the laws and administrative orders mentioned in the petition, the texts of which are appended to it, shows that, in so far as some at any rate of their stipulations, have been applied in the territory of Upper Silesia, this application cannot have taken place without conflicting with a number of clauses of the third part of the Geneva Convention.

"III. It should be remarked, however, that, in the statement made by the German representative to the Council on May 26th, 1933, it is most plainly and categorically affirmed that internal legislation can in no case affect the fulfillment of international obligations—which I think may be taken to mean that the German Government is resolved to see that the provisions of the third part of the Geneva Convention are observed in Upper Silesia. Indeed, the German representative added that, if any infringement of the Convention had taken place, they were to be regarded as errors due to misconstructions of the internal laws by subordinate authorities and would be corrected. I propose that the Council take note of these declarations by the German Government,

which imply that persons who, because they belong to the minority, have lost their employment or found themselves unable to practise their trade or profession in consequence of the application of these laws, will be reinstated in their normal position without delay. The Council will no doubt share my conviction that the German Government has done and will do everything necessary to ensure that the provisions of the Geneva Convention regarding the protection of minorities shall be fully respected. It would, I am sure, be glad if the German Government, in accordance with the principle which has been followed in the past, and to the maintenance of which the Council attaches great importance, whereby the Council or the Rapporteur has been kept informed of developments, would keep me informed in my capacity of Rapporteur of the decisions and measures it may think fit to take in this connection.

"IV. It only remains for me to deal with the point concerning the damage that may have been sustained in consequence of the application of these laws and orders in Upper Silesia by persons belonging to the Jewish minority and, in particular, by the petitioner himself. In this connection, I would remind the Council that these cases may be investigated under the local procedure. I would therefore suggest that the Council request the German Government to arrange for the petitioner's case to be submitted to that procedure forthwith."

MR. LESTER added that his colleagues would observe that what, in the first draft, had been an implication drawn from the first statement of the representative of Germany at a previous Council meeting now became a direct statement quoted from the remarks just made (see paragraph III). Mr. Lester had also taken the opportunity slightly to re-draft the remainder of paragraph III, but that involved no change of substance. He desired to reciprocate the kind remarks of the German representative, and he only regretted that they had been unable to agree on the report.

M. BIANCHERI pointed out that the German delegation had stated in the Council on two occasions that internal legislation could in no case affect the fulfillment of international conventions concluded by the Reich, and that, if any infringements of the Geneva Convention had taken place in German Upper Silesia, they were to be regarded as errors due to misconstruction of the internal laws by subordinate authorities. The Italian delegation noted that formal declaration, which settled the case in question; as, however, certain general considerations which perhaps exceeded the Council's competence had been put forward, the Italian delegation felt it should abstain from approving the report.

COUNT RACZYNSKI said that the members of the Council would certainly remember the Opinion recently given by the Committee of three jurists with regard to a previous question raised by the Polish Government in connection with certain petitions relating to Polish Upper Silesia. The Committee of Jurists, while adopting the same view as the Polish Government from the practical standpoint, had however given a very wide interpretation to Article 147 of the Geneva Convention for purely legal reasons. As he had been unable to accept all the legal con-

\*I Document C. 351 (I). 1933. I.



siderations submitted by the Committee, the Polish representative had been obliged to refrain from voting for the adoption of the Opinion. He quite realized that, having been requested once again to interpret Article 147, the Committee had felt bound to repeat some of the consideration in its previous Opinion. It would also be understood that Count Raczynski maintained his general reservations with regard to that Opinion. At the same time, he agreed to the conclusions of the Committee of Jurists which were relevant to the present case. He took the opportunity once again to pay a tribute to the conscientious work of the three eminent jurists.

M. MASSIGLI, referring to M. Paul-Boncour's statement in the Council a week previously, accepted the report on behalf of the French Government. Public opinion, which saw only the main lines of a problem and sometimes did not greatly concern itself with the juridical limits of the Council's powers, would probably not consider that the regional settlement now proposed was of a nature to allay the uneasiness to which the French representative had drawn attention a week previously. But the Council was obliged first to consider the question from the standpoint of formal law. As the matter had been referred to it under the 1922 Convention, it was the Council's duty to see that in German Upper Silesia at least—since only in that region was it able, under the Convention, to deal with the application of the general legislation of Germany—legislative provisions, the letter and spirit of which were contrary to the provisions of the minorities treaties, should no longer be put into force and that any persons who had been affected by those provisions should have their former position and rights restored to them. If M. Massigli had rightly understood the German representative's statement and the comments of the Rapporteur, the Government of the Reich concurred in these two important points of the report. M. Massigli added that the Rapporteur would certainly wish to satisfy himself that all the necessary measures would be taken to give effect to these decisions. He thanked him in advance for that, as for the efforts he had made in the matter and for the results he had achieved.

M. MADARIAGA wished to say that the Government of his country considered that the Council was fully competent to deal with the matter. He was also in complete agreement with the Committee of Jurists, and accepted the report of the representative of the Irish Free State. He would like to observe that Spain's attitude on that question had been dictated solely by her great respect and deep friendship for the German nation, and by her anxiety that the Members of the Council should always set the example of strictly fulfilling international obligations. As trustees of that right, they must be careful never to do anything in their general policy that might in any way weaken their authority. He also wished to say with what deep gratitude and great confidence the members of the Council had heard the statements of M. von Keller, which enabled them to preserve the confidence they had always reposed in the wisdom of the German people, especially in recent times.

M. OSUSKY said that he could justify on several grounds the freedom with which he wished to speak on the subject of the Bernheim

petition. In the first place, he represented a country that was subject to the regime of the protection of minorities, and was as such, interested in the same degree as the representative of Germany—at all events, so far as Upper Silesia was concerned—in ensuring that the regime of the protection of minorities was not used, for unconfessed political aims, as a lever to create disorder and indiscipline and even to bring about the dislocation of the organized national community. Secondly, he thought he might say that Czechoslovakia had already shown that she intended to live up to her obligations, and even, in the sphere of the protection of minorities, to go beyond them. If after fourteen years of loyal co-operation with the Council in the matter of minorities, the Council still needed any proof that Czechoslovakia had kept her word, it had only to listen to the voices of the Czechoslovak minorities, which, through their leaders and their press, publicly proclaimed that the democracy of Czechoslovakia was their democracy, and that the freedom of the Republic was likewise their freedom. He would not deny that, from time to time, the Council had heard discordant voices on the subject of his country in regard to minorities. But the few complaints that had been heard—the forced tone of which too visibly betrayed, not so much an anxiety for justice, as regret that matters were being too quickly settled within the country—those few complaints were in themselves the most conclusive testimony to the fairness of Czechoslovakia's treatment of her minorities. Those who were accustomed to administration and government knew perfectly well that complaints freely, or even sometimes violently, formulated were the expression of the freedom to which the minorities were entitled.

In the matter of minorities, it was silence that was most disquieting from the point of view of justice. Complaints were often no more than an expression of disappointment that things were going too well, and, in other cases, they only expressed apprehension lest justice might be threatened or offended; but, where minorities were concerned, silence was almost always a sign that justice had been stifled and killed. Yet there was no procedure by which the martyrs of silence could reach the Council. He had often thought that perhaps the lack of any such procedure placed a premium on violence. He had other qualifications to speak about the Bernheim case. Bohemia had given asylum and the rights of citizenship to Jews from the remotest historical times. There were still to be seen in Prague two survivals of the ancient separate city in which the Jews lived—the synagogue and the cemetery, which was the oldest Jewish cemetery in Europe. The old synagogue had been built in the thirteenth century, but the cemetery dated from the tenth. It was still there as a proof that, even in the earliest times, Bohemia had respected both the rights of the living and the rights of the dead. During the great crusades, hosts of crusaders from the west had passed through Prague, where they had attacked, robbed, maltreated and forcibly baptized the Jews. As the local population had developed a taste for this expression of western civilization, King Premysl Otokar of Bohemia had decided to put a stop to it, and had taken the Jews under his protection in 1254. Among the liberties they had enjoyed in Bohemia was the possession of a Jewish civil court.



Apart from that Jewish aspect of the question, the representative of Germany knew better than anyone else that from the thirteenth to the seventeenth century Bohemia had fought for freedom of conscience. In consequence, and as a reward, she had for several centuries disappeared from the map of Europe, and he thought that Czechoslovaks had thus well earned the right to remain, while offending nobody, the trustees of the moral conscience of ancient Bohemia, especially as their fidelity to that memory had brought about the resurrection of the nation. Czechoslovakia knew that justice was eternal, and she was herself a living testimony to the fact; but she also knew that the human beings who were entitled to enjoy and benefit by justice were not eternal. That was why they wished to move more quickly than justice, and that was why he felt entitled to say a few words on certain questions raised by the Bernheim petition. The discussion in progress had revealed some general aspects of the problem which were at least as interesting and important as the actual case itself. The case, and more especially the discussion, recalled the great debates that had taken place in the League Assemblies on minorities and their protection. It would be remembered that the debate oscillated between two theses—namely, that the partial solution of the protection of minorities should be maintained and perpetuated, and should be applied only to certain selected States or certain specified areas, and on the other hand, that the existing discrimination between states should be abolished, just as the minority treaties had abolished the discrimination between the nationals of a country subject to the protection of minorities.

The discussion in which the Council was engaged was a proof that, notwithstanding all the arguments that were advanced in favour of maintaining a partial solution of the problem in a democratic community of nations like the League, the principle of equality was becoming more and more insistent every day. At the same time, it was necessary to be clear as to what was meant by equality. The principle of equality did not derive its force from any national sentiment of prestige, still less from the democratic leveling that was so much decried. It drew its vitality and its dynamic force from the fact that it implied not a downward but an upward levelling. In other words, it meant not equality in evil and injustice, but equality in good and justice. However well designed and organized, no discrimination could easily hold its ground against justice. The most elementary justice addressed an irresistible appeal to conscience. That, however, was not a matter for complaint. It might be annoying, inconvenient, disquieting and sometimes even intolerable, but it was none the less the most glorious achievement of civilization. The case under consideration would therefore necessarily afford the next Assembly a further opportunity of examining the problem in all its aspects. He would like to say then and there that justice, as his country understood it and practised it in connection with minorities, was not and could not be safeguarded from all risks and dangers so long as it was not conceived and executed on the universal plan. Therefore, when the time came, it would be natural, on that question, for Czechoslovakia to pronounce in favour of justice one and indivisible,

the only means of cementing the moral unity of mankind which alone could protect and defend the fruits of civilization and peace itself.

MR. EDEN said that, having on the last occasion when the matter was before the Council expressed acceptance of the report, on behalf of His Majesty's Government in the United Kingdom, he need only add a very few observations. He would, however, like to express his gratification at the progress which had been made in the solution of what was undoubtedly a difficult and delicate problem, and to express the hope that the progress that had been registered would be continued until all the difficulties in connection with the matter were finally regulated. He felt sure that the present solution was one which the Council could regard as satisfactory, and he knew that all his colleagues would join with the German representative in expressing their obligation to the Rapporteur for the outcome of the earnest endeavours which he had had so frequently to make of late, and in which he had always been successful.

M. LANGE observed that he had said at the previous meeting that he would have accepted, on his Government's behalf, the report that had been submitted. Needless to say, he would vote the more heartily in favour of the report after the statement that the representative of Germany had made that morning. He would like to add his own congratulations to the Council on the progress that had been made, and he hoped that still greater advances would be achieved in the future. In that connection, he would refer to a sentence in the statement made by the representative of Germany at the previous meeting, to the effect that if any infringements of the Upper Silesia Convention had taken place, they must be regarded as errors due to misconstructions of the internal laws by subordinate authorities. Everyone knew, of course, that to err was human. Mistakes inevitably occurred in the application of laws, and even of international engagements. At the same time, he would like to point out that that was a phrase that had been seen before in documents relating to the application of minority treaties. He would not like to say that there was a risk of its becoming a classic phrase in such documents; but, in any case, he had come across it so often that he could not refrain from observing that it would be much better if all the States, without exception, which were bound by these solemn undertakings in the matter of minorities, would take the most energetic steps to ensure that the attention of all subordinate officials in minority districts and towns was specially drawn to these solemn international undertakings. M. Lange was in favour of adopting the report; he agreed with what had been said by previous speakers, and expressed to the Rapporteur his high appreciation of his work and the gratitude of all the Members of the Council.

M. VON KELLER first of all replied to the Norwegian representative, who had referred to a familiar phrase to the effect that mistakes had been made by subordinate authorities. The German Government had twice made a very definite and frank declaration, and its word could not be doubted. If it had stated that on one occasion there had been a mistake, this must not be regarded as a habit, nor could doubt be cast on



its statements. Passing to the Czechoslovak representative's speech, M. von Keller said that, after the remarks he had made at the previous meeting, he had not expected that the Czechoslovak representative would fail to observe the limits laid down by the agenda. The unexpected turn taken by the discussion therefore obliged M. von Keller to speak again. But this reply would be as brief as the Czechoslovak representative's interesting and detailed speech had been long. He would confine himself to saying that all that M. Osusky had said greatly exceeded the bounds of the matter which was before the Council.

M. OSUSKY replied that it was intentionally that he had refrained from speaking of the concrete case of M. Bernheim. It was intentionally that he had tried to draw a lesson from the case. He did not think that that was forbidden by the Council's agenda of that morning. All that he had desired—perhaps in rather too long a speech—had been to repeat or develop an idea which he had expressed a week previously before the Council—namely, that the present discussion and that of a week ago constituted a complete demonstration that it was never unnecessary or premature to organize the defence of justice.

M. LANGE had not wished to cast the slightest doubt on Germany's intentions or goodwill as regards the observance of her international obligations. Nothing had been further from his mind. He regretted that he had expressed himself in a way that could be so interpreted. He had simply wished to say that breaches of obligations might be prevented by giving instructions to subordinates well in advance, in order that the Council should not have to deal with complaints like that which it was now examining. M. Lange had expressed the fear that the familiar phrase in question would become only too common, because he had found it in documents emanating from Governments other than the German Government.

*The Conclusions of the Report were adopted, the German and Italian representatives abstaining.*

The President expressed the hope that the report and the Opinion of the Committee of Jurists might serve to bring about a solution of the entire question.

MR. LESTER said that now that the report had been adopted by the Council, and the Council had left him with certain duties to fulfill in connection with it, he would like to express his firm conviction that the Council would not again be called upon to consider the question in any form as, in common with his colleagues, he had not had the slightest doubt that the German Government was determined to carry out its international obligations.

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This case resulted in very important determinations. One was that any member of a religious or racial minority of Upper Silesia was entitled, under such treaties, to bring the infraction of the rights of the entire minority before the Council of the League for determination, and not merely his own personal grievance, nor those of his particular occupation,

but the "general question" itself. Moreover, birth in Upper Silesia was not necessary, nor actual physical presence there when the petition was filed. It is also significant that even Germany expressly conceded that "the internal German legislation could not in any way affect international conventions concluded by the Reich."

Moreover, Germany's own claim that the Council should permit her to correct the alleged infractions without international action, which she claimed had occurred in Upper Silesia by errors due to misconstruction by subordinate authorities, was overruled. The determination of the Council in this particular instance acquires added weight by reason of the fact that a Committee of three distinguished jurists reported on certain legal phases of it, and their report is spread in full on the official minutes. This Committee consisted of Prof. Max Huber, ex-President of the World Court, M. Bourquin and M. Pedroso. This Committee of jurists succinctly declared that

*"Monsieur Bernheim, being of non-Aryan origin, belongs to one of these minorities," within the meaning of the Treaty. They added that "the intention was that all nationals of the State should be equal before the law, and that that equality should exist both in law and in fact."*

The emphasis laid by several of the delegates to the Council on the pledges Germany gave to the United States and the other allies at the Peace Conference as to the treatment she was to accord to her minorities, is also striking. Several delegates also emphasized the point that Germany's general course not merely violated fundamental principles of justice, but also established principles of international law.



## APPENDIX I.

### TO THE PRESIDENT AND THE MEMBERS OF THE COUNCIL OF THE LEAGUE OF NATIONS

*Petition of FRANZ BERNHEIM, resident of German origin of Gleiwitz in German Upper Silesia based on Article 147 of the German-Polish Convention regarding Upper Silesia, of May 15th, 1922, and referring to provisions of Part III of the said Convention.*

#### I.

*In the convention of May 15th, 1922, between Germany and Poland concerning Upper Silesia the contracting parties agreed upon the following provisions:*

*Article 66—The German Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Germany without distinction of birth, nationality, language, race, or religion.*

*Article 67—Paragraph 1—All German nationals shall be equal before the law and enjoy the same civic and political rights without distinction of race, language or religion.*

*Article 75—Paragraph 2—Legislative and administrative provisions may not establish any differential treatment of nationals belonging to a minority. Similarly they may not be interpreted nor applied in a discriminatory manner to the detriment of such persons.*

*Paragraph 3—Nationals belonging to minorities shall in actual practice receive from the authorities and officials the same treatment and the same guarantees as other nationals. In particular, the authorities and officials may not treat nationals belonging to minorities with contempt, nor omit to protect them against punishable acts.*

*Article 80—Nationals belonging to minorities shall be treated on the same footing as other nationals with regard to the exercise of an agricultural, commercial or industrial calling or any other calling. They shall be subject only to provisions in force as applied to other nationals.*

*Article 83—The high contracting parties undertake to assure full and complete protection of life and liberty to all inhabitants of a plebiscite territory without distinction of birth, nationality, language, race or religion.*

#### II.

*1. In the Reich Legal Gazette, Part 1, issued in Berlin April 7th, 1933, No. 34, a law "for the reorganization of the civil service" was promulgated by the government of the German Reich.*

*Section 3, Paragraph 1, of the law says, "Officials who are of non-Aryan descent are to be placed in retirement; in the case of honorary officials, they shall be discharged from official position."*

*Section 8 provides that in regard to these officials placed in retirement or dismissed in accordance with Section 3, they shall not receive a pension unless they have completed at least ten years' service. Section 9 contains further discriminatory provisions in regard to officials placed in retirement in accordance with Section 3.*

*2. The German Government, in the Reich Legal Gazette, Part 1, issued in Berlin April 10th, 1933, No. 36, promulgated a law on "admission to the legal profession," dated April 7th, 1933.*

*Section 1 of this law says: "The admission of lawyers who within the meaning of the law on reorganization of the civil service, April 7th, 1933, are of non-Aryan descent can be cancelled up to September 30th, 1933.*

*Section 2 says: "Admission to legal practice can be refused to persons who within the meaning of the law on reorganization of the civil service, April 7th, 1933, are of non-Aryan descent, even if the reasons provided for in this connection by the regulation of the legal profession do not exist."*

*Section 4 says: "The judicial administration can forbid a lawyer to act as counsel pending decision whether use shall be made of the faculty of withdrawing permission."*

*3. In a decree of April 1, 1933, regarding the exercise of the calling of notary, was the following:*

*"Maintenance of public order and security will be exposed to serious danger if Germans are still liable to be served with documents in legal proceedings which have been drawn up or certified by Jewish notaries. I accordingly ask that Jewish notaries be urgently advised in their own interests to refrain until further notice from exercising their calling.*

*"In this connection the attention of notaries should be drawn to the fact that, should they refuse to comply with this recommendation, they will expose themselves to serious dangers in view of the excited state of public opinion. Notaries should be recommended to inform the competent presidents of provincial courts that they will refrain from exercising their calling pending the issue of further regulations regarding conditions applying to notaries.*

*Signed—KERR,*

*"Reich Commissioner, Prussian Ministry of Justice.*

*4. The government of the German Reich promulgated April 25th, 1933, a law "against the alienization of the German schools and high schools," which says, Section 4:*

*"In making new admissions, care should be taken that the number of German nationals who, within the meaning of the law on reorganization of the civil service, April 7th, 1933, are of non-Aryan descent, does not exceed, among the total number of pupils attending each school and the faculty, the proportion of non-Aryans to the total German population. This proportion shall be uniformly fixed for the whole of Germany at 1.5 per cent.*

*"In reducing the number of pupils and students in accordance with Section III because of the overcrowding of the professions, the proper*



proportion should also be observed between the total number of pupils and the number of non-Aryans."

The Ministry of the Interior has issued regulations to give effect to this law, of which Number II reads:

"Pupils of non-Aryan descent who have newly entered or enter school at the beginning of the academic year 1933, Easter, 1933, shall in all cases be regarded as not yet admitted."

5. The Minister of Labor of the German Reich has promulgated a decree "on admission of doctors to the panels of health insurance funds," of which Article I stipulates:

"Doctors of non-Aryan descent on panels of insurance funds shall no longer be allowed to practice. New entries of such doctors on the panels of insurance funds shall not be allowed."

Four regulations for the admission of health insurance doctors, dated December 30th, 1931, are amended as follows by this decree:

"Registration is only permissible when the doctor is a German national and of Aryan descent."

All these laws and decrees were promulgated for the whole territory of the German Reich; therefore they also apply to that part of Upper Silesia which remained German as a consequence of the decision of the Conference of Ambassadors and is subject to the provisions of the Convention of May 15th, 1922.

Only in the law against the alienization of German schools and high schools is there a provision, in Section V, which says the obligations incurred by Germany under international treaties are not affected by the provisions of the present law. If this means that the law in question does not apply to Upper Silesia, it must be remarked that in practice it has been applied there in exactly the same way and Jewish pupils have been refused admission or have been turned out of schools in exactly the same way as in the rest of Germany.

### III.

The laws and decrees quoted above are in contradiction with the provisions of Part III of this convention also reproduced above;

The principle laid down in Article LXVII and LXXV of equality of all German nationals before the law and as regards civil and political rights;

The principle laid down in Article LXXX of obligation to treat all nationals on the same footing in regard to the exercise of their callings;

And they constitute infringement of the obligation laid down in Article LXVI, LXXXIII and LXXXV to provide indiscriminating, comprehensive protection of the lives and liberty of all inhabitants and nationals of Germany.

This is particularly the case when the Minister of Justice forces Jewish notaries to cease their activities, which they are entitled to exercise by law, under threat that otherwise he will be unable to protect them from the violence of the populace and thus makes an illegal demand on

them involving punishable acts, instead of taking steps to deal with these punishable acts according to law.

These laws were partly put in force before their promulgation, as, for example, in the case of the exclusion of notaries, while as regards State officials the law on reorganization of the civil service was applied by Reich and State authorities before it came into effect and even before its promulgation.

In Prussia, Jewish barristers were precluded from representing clients in courts, with very few exceptions, even before this law was promulgated, and this exclusion was expressly sanctioned by representatives of the Ministry of Justice.

Jewish pupils who had already been attending higher schools were in many cases removed from the schools by those in charge, with the help of other pupils, before the promulgation of the law.

### IV.

On April 1, 1933, a public boycott of Jewish business, lawyers, doctors, etc., was ordered and organized by an office under the authority of the German Chancellor and they were treated with public contempt as part of this measure.

This boycott was carried out by storm troops and picked formations, also under orders of the German Chancellor as supreme leader, and the public authorities failed to provide the Jewish subjects of Germany with the protection to which they were entitled by law.

As far as Upper Silesia was concerned this action constituted an infringement particularly of the provisions of Division II, above all of the Articles LXXV and LXXXIII.

Since then German nationals or inhabitants of the plebiscite territory who belonged to the minority have been treated in a discriminatory manner by the authorities and officials, who have failed to take the necessary steps for their protection against punishable acts.

There are many more legal and administrative measures and decrees which carry out this tendency that now predominates throughout the legislation of the German Reich.

### V.

The present petition confines itself to drawing attention to the foregoing and bases itself on the laws, decrees and administrative measures quoted above.

It draws attention to the fact that the German Reich undertook in Article LXXXV that the stipulations contained in Article LXVI to LXVII should be recognized as fundamental laws and no law, regulation or official action should conflict or interfere with these stipulations nor should any law, regulation or official action prevail over them.

Whereas under Article LXXII Germany has agreed that the stipulations in the foregoing articles, in so far as they affect persons belonging to racial, religious and linguistic minorities, constitute obligations of inter-



national concern and shall be placed under the guarantee of the League of Nations and shall not be modified without the assent of a majority of the Council of the League of Nations;

WHEREAS, Germany has agreed that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or any danger of infraction of any of these obligations, and the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances:

The undersigned, Franz Bernheim, born Sept. 15, 1899, in Salsburg, Austria, a citizen of Wurttemberg and a German national of Jewish, hence non-Aryan descent; previously residing in Gleiwitz, Schillerstrasse 66, German Upper Silesia; at present temporarily staying in Prague, Czechoslovakia; employed from Sept. 30th, 1931, to April 30th, 1933, by the Deutsches Familien Kaufhaus, Ltd., Gleiwitz branch, and then discharged for the reason that all Jewish employees had to be dismissed; passport No. 180/128/30, issued by the Berlin Charlottenburg police office, Feb. 28th, 1930, and thus legitimized under Article CXLVII as a member of the minority in accordance with Part 3 of the Geneva Convention of May 15th, 1922.

Hereby submits this petition to the Council of the League of Nations, signed with his own hand, requesting the Council to take such action and give such directions as it may deem proper in order to declare null and void for Upper Silesia the laws, decrees and administrative measures in contradiction to the aforementioned fundamental principles and insure that they shall have no validity, and further, to give instructions that the situation guaranteed by the convention shall be restored and that Jews injured by these measures shall be reinstated in their rights and shall be given compensation.

#### VI.

The undersigned, Franz Bernheim, further requests the Secretary of the League of Nations to treat this petition as urgent.

The reason for this request is that, as the above-quoted laws and decrees demonstrate, the application of the principle of inequality to German nationals of non-Aryan and Jewish descent is being systematically pursued in all spheres of private and public life, so that already an enormous number of Jewish lives have been ruined, and if the tendencies at present prevailing in Germany continue to hold sway in a very short time every Jew in Germany will have suffered permanent injury so that any restoration or reparation will become impossible, and thousands and tens of thousands will have completely lost their livelihood.

(Signed) FRANZ BERNHEIM,

This signature legalized by  
Viktor Ludwig, Notary.  
Prague, May 12, 1933.

Prague, May 12, 1933.

#### APPENDIX II.

#### U. S. SENATE RESOLUTION 154 INTRODUCED BY SENATOR TYDINGS, JANUARY 24, 1934

WHEREAS the present Government of the German Reich has deprived certain groups of its citizens of many of their civil and political rights and has imposed upon them restrictions, pains, and penalties, harsh and severe in nature; and

WHEREAS among the groups so discriminated against by said Government are approximately six hundred thousand Jewish citizens of the Reich, and the great number of Christians of partly or wholly Jewish descent; and

WHEREAS it is manifest that, as regards the Jewish citizens of the Reich and such Christians of Jewish descent, the actual causes for the discriminations against them are their religious beliefs or professions, and their racial origin, neither of which is a ground reasonably affecting their rights and privileges as citizens of a modern state; and

WHEREAS, on many historic occasions, beginning in the year 1840 and continuing down to the year 1919, intercessions have been made by the United States on behalf of citizens of states other than the United States, oppressed or persecuted by their own governments or peoples, including nine separate occasions on behalf of Jews in foreign states, indicating that for nearly one hundred years the traditional policy of the United States has been to take cognizance of such invasions of human rights; and

WHEREAS the German Reich stands pledged to the United States to accord to its "nationals who belong to racial, religious or linguistic minorities" \* \* \* "the same treatment and security in law and in fact as the other nationals";

NOW THEREFORE, be it

RESOLVED, That the Senate of the United States express its profound feelings of surprise and pain, as representatives of the people of the United States, upon learning of the discriminations and oppression imposed by the Reich upon its minority groups, including its Jewish citizens; and be it further

RESOLVED, That the Senate of the United States express its earnest hope that the German Reich will speedily alter its policy, restore to its minority groups the civil and political rights of which they have been recently deprived, and undo, so far as may be, the wrongs that have been done them.



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M. GORDON LIVERMAN  
London, England  
and  
PRESIDENTS OF ALL  
AMERICAN DISTRICTS

February 28, 1934.

The Members of the American Historical  
Society and American Political Science  
Association

Dear Sir:

We take the liberty to enclose herewith, with the compliments of the B'nai B'rith, a pamphlet by Max J. Kohler, M.A., L.I.B., D.H.L., one of the greatest students of international law in this country, entitled "The United States and German Jewish Persecutions - Precedents for Popular and Governmental Action". The pamphlet presents a very thorough study of precedents in American History for intervention by the United States government on behalf of persecuted religious and national groups in other countries. We believe that the material contained in this pamphlet will be of great value to yourself and to your classes in teaching American political history.

Sincerely yours,

*Alfred M. Cohen*  
President

*I. M. Rubinow*  
Secretary